START-UPS: EVERYTHING YOU NEED TO KNOW TO MAXIMIZE BUSINESS SUCCESS & MINIMIZE RISK

A free resource from
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INTRODUCTION

A proper legal framework is crucial to a start-up's success.

When people think of starting a business, it's often all about the idea – the creative force that drives the action of going into business. A legal framework is often glossed over – an afterthought oft "remedied" with online legal document services and template contracts pulled from the internet.

This is like using rotted wood to build the frame of your home. You deserve better than that – and so does your business.

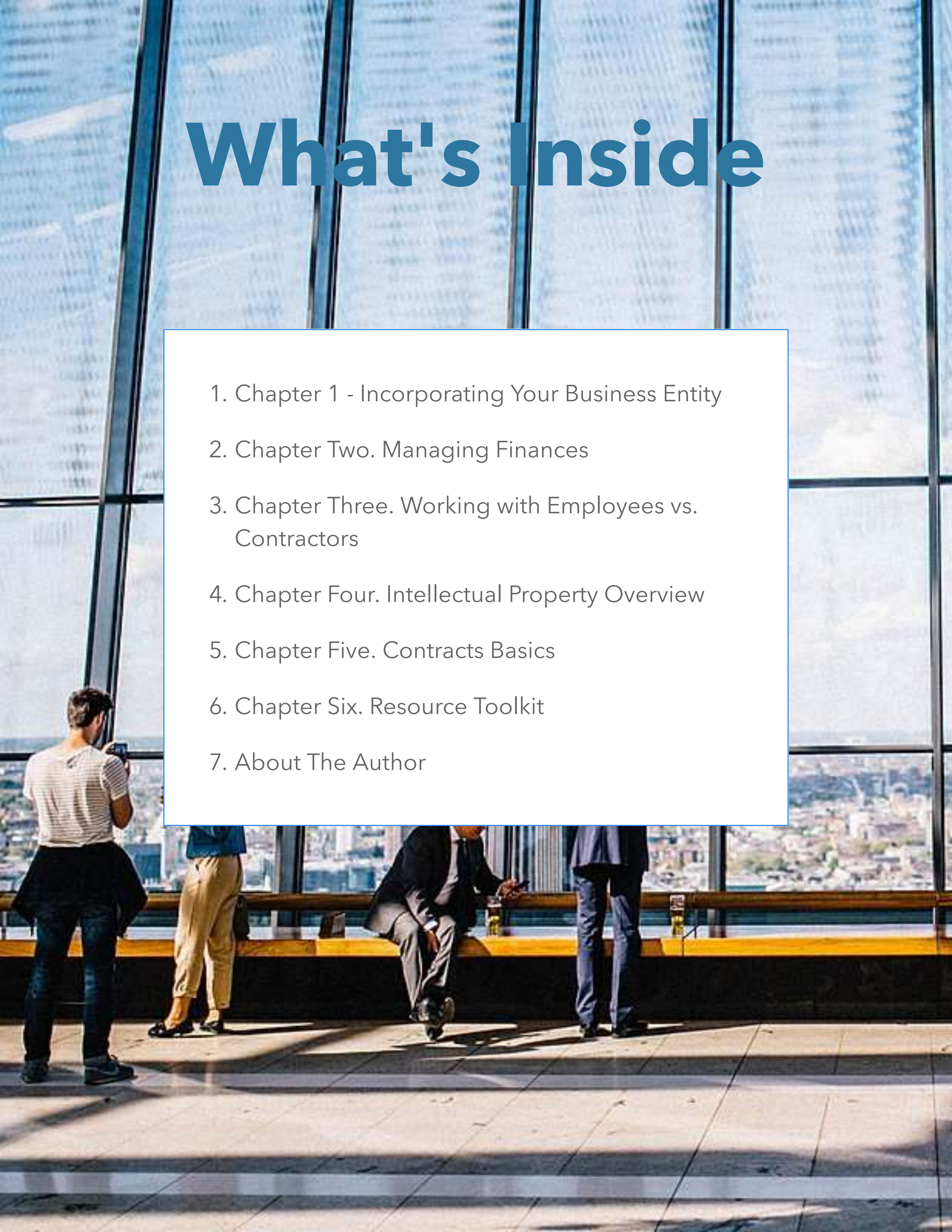
A proper legal framework considers things like:

- Choosing the right business entity
- Selecting the proper business documents
- Appropriately managing business finances
- Filing and paying accurate business taxes
- Crafting custom business contracts
- Protecting IP assets

I know, it sounds like a lot. But I'll cover each step in your legal framework in this ebook so you'll be well-equipped to get your business started off on the right foot.

Ready to get started?

Let's have some fun!



What's Inside

Chapter One

Incorporating Your Business Entity

Check out the 10 Step Formula for a Stress-Free Incorporation

Incorporating Your Business Entity

Starting a new business venture can be an exciting time. However, this excitement can also be mixed with stress and frustration. You can alleviate some of this stress and frustration by following these key steps.

1. Choose a name that describes your business and differs from other businesses. Do not forget to check with your Secretary of State for availability of a business name, requirements for registering the name, and filing a trademark to protect the name.

2. Research various business entities to determine the best structure for your company. Understand the reporting and record keeping requirements for the business entity you choose for your company.

3. Check with state and local offices to determine if you need permits, registrations, or licenses for your business.

4. Determine the proper business taxes and tax reporting obligations for your business.

5. Set up a bookkeeping system and keep accurate books and records.

6. Draft and execute written agreements if you have partners or other owners.

7. Obtain an Employer Identification Number (EIN), if required.

8. Review securities laws to make sure you comply with all federal and state security laws.

9. Establish a privacy policy for your company and draft a company handbook.

10. Consult with and hire competent professionals to help you navigate the legal, tax, and financial matters you will encounter as a business owner.

The above is not an exhaustive checklist of all steps required to open a new business. But don't worry – we'll discuss other steps regarding finances, employees, intellectual property, and contracts in the following chapters.

Choosing Whether to Incorporate Your Business

Before you begin operations, make your first sale, or accept your first client, you need to determine the legal entity you wish to use for your business. Each business entity has pros and cons, but the best business entity for you depends on your business and your needs. Because the choice of a legal entity for your company has significant implications for future operations, growth, taxes, and personal liability, among other issues, review each of the four general legal entities available before choosing the structure of your company.

Sole Proprietorships

Sole proprietorships are the easiest and least expensive business structure to establish because you do not have to file documents with the state to set up your business structure. It is up to you how your company is structured and operated.

Many family-owned and operated businesses remain sole proprietorships. With a sole proprietorship, you report all business income and losses on your personal income tax return. Therefore, there is no need to file a separate business tax return because any profit is taxed as your personal income.

Even though a sole proprietorship is easy to set up and operate, the business structure provides no personal liability protection. As the owner, you are responsible for all debts and liabilities of the company. If your business closes, you are personally responsible for paying the business debts even if the business has no income or assets remaining. If a client or other party sues the business, you are personally liable for the outcome.

One note about naming your business when you are a sole proprietorship -- if you use a DBA (Doing Business As) name, you need to check with your state's Secretary of State's office to determine if you must register the DBA name. Many states maintain a database of DBA names used by businesses within the state. Checking the database before choosing your business name can help you avoid choosing a name similar to any other business. You do not want your business to be confused with another business because that confusion could cause a loss in business.

Whether you choose a sole proprietorship or other business entity below, do not forget to protect your business name by filing for a trademark. Even a corporation should file a trademark application for the business name because registering a name with your state does not mean you own the name. The best way to protect your business name from being used by another business is to trademark the name.

Forming a Partnership

A partnership is similar to a sole proprietorship except that you have more than one owner involved in the business. Partnership income and losses pass through the company to each partner.

As a partner, you report as business income on your personal income tax return the net profit you receive from the partnership. A partnership must file an informational partnership tax return to report the business income and loss and the share allocated to each partner. Significantly, the partners are personally liable for the partnership debts and liabilities.

However, the partnership agreement can define and limit the partners' interests, liabilities, and management authority. For example, an LLP (Limited Liability Partnership) limits the liability of each limited partner whereas the partners in a General Partnership share all liability for the partnership equally. In a Limited Partnership (LP), at least one partner is a general partner with full personal liability for all partnership debts and liabilities. However, at least one of the other partners in an LP must be a "silent" partner without management authority and whose liability is limited to his or her invested interest in the LP.

It is particularly important that partners have a detailed written partnership agreement defining the responsibilities, authority, interests, and liabilities of each partner. The partnership agreement also defines the day-to-day operations of the business and the business purpose.

Limited Liability Companies

A Limited Liability Company (LLC) is a fusion of a corporation and a partnership. The LLC shares some of the same characteristics with both business structures.

Characteristics of an LLC shared with a partnership **and** a corporation include:

- The LLC may have an unlimited number of owners (called members); and,
- Members do not have to be residents or citizens of the United States.

Characteristics of an LLC shared with a **partnership but not shared** with a corporation include:

- Members report business losses and profits on their personal income tax returns;
- The LLC can distribute special allocations under certain circumstances;
- The filing requirements are not as strict and cumbersome;
- Members have much more flexibility in how to structure and operate the business through the LLC Operating Agreement, and,
- The LLC does not have to hold annual meetings.

Characteristics of an LLC shared with a **corporation but not shared** with a partnership include:

- Members have limited liability for the business obligations and debts;
- You must file documents with your state to register and organize the LLC;
- The LLC may be perpetual; and,
- Members are not limited to individuals and may be other business entities.

Even though there may be many advantages of forming an LLC, such as tax and liability benefits, there are disadvantages. LLCs are not treated uniformly in every state. In addition, you could be responsible for payment of self-employment taxes. Another issue could be the potential for growth. An LLC does not issue stock. Therefore, any investor would need to become a member according to the terms of the LLC Operating Agreement or state law.

Corporations

Corporations are the most formal business entity. Owners are called shareholders. Your interest in the corporation is defined by how many shares you own. One of the most attractive benefits of a corporation is the level of protection from personal liability for corporate debts and obligations.

Your liability is limited to your investment in the shares you own. For some business owners, the protection from personal liability offered by a corporation may not offset some downsides of forming a corporation.

The fact that profits for corporations are taxed twice makes this business entity unfavorable for some business owners. Corporations must file corporate tax returns to pay taxes on profits. As a shareholder, you must report distributions (dividends) on your tax returns as income.

The second disadvantage is the requirements to organize a corporation and operate a corporation. Corporations must hold annual meetings of stockholders and periodic meetings of board members. Detailed minutes of the meetings must be maintained. In addition, corporations may also be required to file various annual reports with state offices.

Besides the above disadvantages, owners of corporations (and LLCs) could be held liable in some cases for business debt and obligations. If you commit fraud, commingle your assets with the business, or commit other wrongdoing, a judge could rule you are personally liable. Holding a shareholder, member, officer, or other party liable for corporate obligations is called "piercing the corporate veil."

If you believe a corporation is the best business structure for your company, some of the basic steps to set up the corporation include:

1. Filing corporate forms with your Secretary of State's office. Forms for each state are slightly different. You can complete the forms yourself; however, hiring counsel can avoid mistakes and make the process easier and less stressful.
2. Create a Minute Book to record and preserve important business documents and details of meetings.
3. Set up a process for preparing and filing annual reports required by your state laws.
4. Draft the Corporate Bylaws and a Shareholder Agreement.
5. Issue stock certificates to shareholders upon receiving contributions from each shareholder.
6. The initial Board of Directors need to select Officers to manage the business.
7. Draft business contracts and forms required to protect the business.

This is a general overview of the initial steps of creating a corporation. There are many other steps you will need to take once you have created the corporation to manage day-to-day operations.

The bottom line – Create a separate business entity to protect your personal assets.

Additional Reading - Start-Up Checklist - Ten Things You Need to Consider Before Starting Your Company

"Opportunities don't happen. You create them."

Chris Grosser, Tesla

Chapter Two

Managing Finances

Learn the practical tips that can help you avoid costly mistakes as a new business owner.

Managing Finances

Business finances, including tax matters, can be some of the most difficult aspects to manage for new business owners. Whether you incorporate your business or decide on another business structure, you should have a thorough understanding of the financial and tax matters that impact your business and your day-to-day operations.

Below are some of the important issues related to business finances and taxes important to remember as a new business owner. Also included are practical tips that can help you avoid costly mistakes.

The Important First Steps All Businesses Must Take Before Opening Its Doors

Some of the important financial matters you must address immediately include:

- **Select a Bank** – Selecting a bank may sound simple, but there are many factors to consider before choosing a bank. For instance, what fees are you required to pay? Some banks have lower minimum balances and fees to attract business customers. In addition, does the bank have a secure and cutting-edge online and mobile banking system? Online banking can save time and money! Also, can you sync your bank records with your accounting software? This function is useful and saves time and money as well as reducing the risk of mistakes when transferring information from bank records to your internal accounting system.

- **Choose and Set Up an Accounting System** – You no longer need to perform accounting and bookkeeping by hand. There are different platforms to choose from that provide many services you need to track receipts and payments. Consider a cloud-based accounting platform such as FreshBooks, Sage40cloud, or Xero, which are online accounting platforms for small businesses.

- **Set Up Your Payroll System –** In addition to an accounting platform, you also need a good payroll system. If you will pay employees or independent contractors, consider a payroll processor. A payroll processor helps you calculate payroll, including the taxes that must be withheld from each employee's check and the matching employer taxes for each employee. Many of these payroll services will withhold taxes and remit the taxes for you each month, besides managing all other matters related to your employment filings. Two payroll companies you may want to research are Gusto and ADP.

Understanding the Taxes on Your Business Income

As we mentioned in Chapter One, the business entity you chose determines how your business income is taxed. With a corporation, you face double taxation.

You must file a corporate tax return so the corporation can pay taxes on the business profits. When the corporation issues distributions to shareholders, the shareholders pay personal taxes on the distributions.

If you choose another business entity, such as an LLC, partnership, or sole proprietorship, the income from the business should "pass through" the company to be taxed as personal income by the owners. The company itself will not have a tax liability for income. However, an LLC may choose to be taxed as a corporation, although this is uncommon.

If you choose to be taxed as an S-Corp, you have more ownership restrictions, tax filings, and formalities than you do with a C-Corp. Choosing an S-Corp may seem appealing because you could reduce your tax liability. However, for some businesses, the reduction in tax liability is not worth the additional restrictions and requirements that accompany making an S-Corp election. Before choosing to be taxed as an S-Corp, consult with a tax professional or corporate attorney.

Paying Taxes on Business Profits

The manner in which you pay taxes on the profit from your company depends on the business structure you choose for your company.

Some companies must pay corporate taxes while other companies are considered "pass-through" entities for tax purposes and file only informational tax returns. Also, you need to remember that "profits" are not based on the money you deposit into your personal bank account ("distributions").

Take a look at how profits are distributed and taxed by the various business entities.

Sole Proprietorships

With a sole proprietorship, you pay personal income taxes on all profits generated by the company. The company's profits and losses "pass through" the company to your personal income tax return. Usually a sole proprietor completes a Schedule C to attach to his or her personal income tax return.

Schedule C reports all business income and expenses. The profit or loss on your Schedule C is transferred to your Form 1040 to determine your tax liability for the year. You should pay personal quarterly estimated taxes throughout the year towards your yearend tax liability.

Partnerships

Partnerships are also "pass-through" tax entities. Each partner is allocated a share of the business profits and losses according to the partner's ownership percentage. The partnership must file an informational tax return (Form 1065) with the IRS each year to report the business income and expenses. As part of the informational tax return, each partner is issued a K-1 to include with the partner's personal income tax return. The K-1 reports the individual partner's allocation of profit or loss from the partnership for that tax year.

The partner includes the profit or loss on Form 1040 to determine his or her tax liability. As with a sole proprietorship, you should pay quarterly estimated taxes throughout the year towards your yearend tax liability.

More on Paying Taxes on Business Profits

- **Limited Liability Companies (LLCs)**

The IRS has no tax class for LLCs. LLCs by default are taxed as sole proprietorships (single-member LLCs) or partnerships (multi-member LLCs), but an LLC may elect to be taxed as a corporation. Therefore, you follow the same rules as you would for a sole proprietorship or a partnership for reporting profits and losses of your LLC depending on whether you are the only member, or you have several members.

- **Corporations**

Corporate profits are taxed twice, first at the corporate level and then again at the personal level when profits are distributed to the shareholder. The corporation must file a corporate tax return (Form 1120) and pay taxes based on its profits at a corporate tax rate. If the corporation distributes money to shareholders, each shareholder must include the distributions as income on his or her personal income tax return. The corporation must report all distributions on its corporate tax return.

S-Corps follow different rules for paying taxes than a C-Corp. The tax rules for S-Corps are much more complex. However, the main steps of paying taxes for profits derived from an S-Corp involve:

- The S-Corp must pay salaries to each owner-employee that is subject to normal withholding tax.
- Each owner should pay estimated quarterly taxes for anticipated company profits.
- The S-Corp issues a K-1 to each owner-employee to report the person's share of business profit or loss for the year.
- The S-Corp files an informational tax return (Form 1120S) with the IRS.
- Each owner attaches the K-1 and W-2 to his or her tax return to determine his or her tax liability for the year.

Additional Reading - How to Get a Tax Benefit from Business Losses

State and Local Taxes

Besides federal taxes, your business may owe state and local taxes. Other taxes a business may owe include property tax, sales tax, franchise tax, and excise tax. It is usually best to consult a tax professional or business accountant to determine your tax liability to avoid costly mistakes, especially if you have never owned or operated a business before this company.

Do You Need an Accountant and a Tax Professional?

Many small business owners manage the finances, accounting, and tax matters for their business. However, if you are not familiar with the laws related to financial matters, hire a professional to assist you with financial and tax matters. Hiring a professional can save you time, headaches, and money.

Some practical tips for finding and working with an accountant and tax professional include:

- **Ask for a referral from a trusted source.** Your business attorney (if not a tax attorney) may refer you to an accountant or tax professional that the attorney has worked with. You may also want to check with other business owners or a local business association for referrals. Remember, a referral is just a beginning point. Always conduct thorough interviews and check other references before you hire a professional to assist you with financial matters.

- **Understand their services and fees.** Have a clear understanding of the services provided and the fees for those services. A good accountant should be able to help you with setting up your bookkeeping system, establishing a payroll system, preparing and filing tax returns, and addressing other tax and financial matters.

- **Consider whether you have a good rapport with the professional.** You cannot work with someone you do not understand or feel comfortable with when meeting with that person. Be able to be open and honest with your accountant, and you should receive prompt, direct responses to your questions and needs.

- **Work with someone who utilizes the tools you prefer to use.** If you prefer to communicate by email and text, make sure that the accountant does not use office phones and postal mail as the main forms of communication. Does the accountant have evening and weekend hours or just a typical Monday through Friday, nine to five work schedule?

Ask Questions and Get Help!

Guessing about how to do something and “winging it” are not wise choices when dealing with business financial and tax matters. Ask questions and seek advice from trusted resources to avoid mistakes and problems.

The bottom line – Don’t mix business and personal finances and keep detailed records of all income and expenditures.


"I owe my success to having listened respectfully to the very best advice, and then going away and doing the exact opposite."
G. K. Chesterton

Chapter Three

Working with Employees vs. Contractors

Do you have questions about what makes an employee? We have the answers!

Working with Employees vs. Contractors

Some sole proprietors never hire anyone to work with them in their business. However, if you intend to hire individuals for your business, you need to understand the differences between employees and contractors

There are distinct differences in how employees and independent contractors are treated concerning payment for services, taxes, and benefits. For example, you may have less tax liability when using independent contractors; however, you cannot exercise the same level of control over a contractor you can an employee.

Key Differences Between Employees and Independent Contractors

Some of the key differences between an employee and an independent contractor arise in these five areas:

- **Payment for Services –** Employees are paid a set salary, hourly wages, and/or commission on a specific schedule on an ongoing basis. An independent contractor is paid based on a project, even if the project is billed in several installments.
- **Benefits –** Employees are typically offered benefits, such as paid time off, health insurance, and retirement accounts. Independent contractors may not have any employee benefits offered by the company.
- **Work Hours and Performance –** An employer has control over an employee to set the work hours and direct how the work is to be performed. Contractors set their hours and decide how to perform the work to accomplish the task.
- **Equipment –** Employers typically provide all equipment required for an employee to perform his or her duties. Independent contractors typically own and provide the equipment used to complete a job.
- **Termination of Employment –** An employee or an employer can terminate employment for any legal reason. However, an independent contractor's termination is subject to the terms of a contract.

Tax Liability for Employees and Independent Contractors

An employer's tax liability for an employee and the responsibility to report payments to an employee differs from the responsibility for payments to an independent contractor.

Tax Responsibilities for Employees

For an employee, you must withhold income taxes from the employee's payroll to submit to the government. Usually you must withhold amounts for federal and state income taxes besides the employee's contribution to Medicare and Social Security. An employee is solely responsible for the payment of federal and state income taxes. However, an employer must pay a matching amount for Medicare and Social Security withholding.

As the employer, you will withhold taxes from an employee's pay and remit those payments to the government under a specific schedule. You must also file employment tax returns. Depending on the size of your payroll, you may have to make monthly or semi-weekly deposits. Most companies must file quarterly and annual employment tax reports.

Besides payroll taxes, employers are also required to pay unemployment and workers' compensation insurance for employees. If the company offers health insurance, paid time off, retirement, and other employee benefits, the employer must maintain detailed records for all withholding and benefits. The employee must receive a detailed record of all income and benefits received and withholdings made for each pay period.

Tax Liability for Independent Contractors

An employer's tax liability for an employee and the responsibility to report payments to an employee differs from the responsibility for payments to an independent contractor.

Tax Responsibilities for Independent Contractors

The tax responsibilities for independent contractors are much easier and less costly. You do not have to withhold income taxes for contractors nor are you required to offer contractors benefits. Usually a business does not have to pay unemployment tax or workers' compensation insurance premiums for independent contractors.

However, if you pay a contractor taxed as a pass-through entity $600 or more during the year, you must report those payments to the IRS. Before paying an independent contractor any funds, you should receive an IRS W-9 Form from the contractor. The W-9 Form provides you with all information to complete the tax form required for payments of $600 or more. The W-9 Form includes the contractor's name, address, and Social Security Number or Employer Identification Number. This information is used on the IRS Form 1099 you file with the IRS at the end of the year stating the total paid to the independent contractor for that tax year.

Further Reading: Do I Have to Issue a 1099 to Independent Contractors I Paid Via Third-Party Vendor Services Like PayPal, Venmo or Wave?

Protecting Intellectual Property and Other Business Interests

Whether you hire employees or independent contractors, you need to protect your company's intellectual property.

Protect your company's non-tangible assets with written contracts to govern every business relationship.

Intellectual Property

Whether you hire an employee or an independent contractor, you should have a written agreement that protects intellectual property rights. Typically, if an employee creates or invents anything that is within the scope of the person's employment, that becomes the property of the company. However, a contractor typically owns anything the contractor creates even though you might pay them for services.

In either case, the best way to protect your company's best interest is to have a written agreement that clearly specifies that anything created or invented while performing work for the company is the property of the company.

Confidentiality Agreements

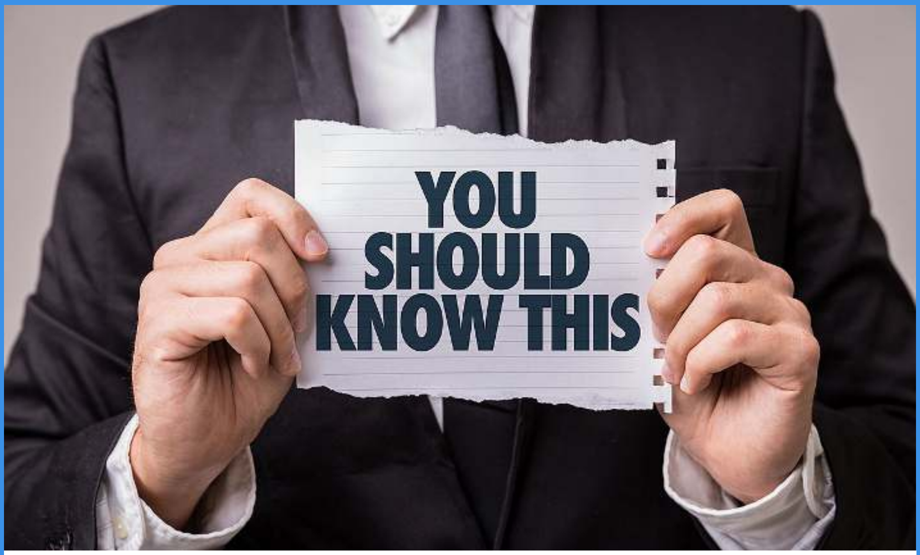
Non-Disclosure Agreements (NDA) are important to protect confidential information and prevent employees and contractors from using or sharing this information with other parties. Make sure your agreement covers confidential information, the length of the NDA, and any exceptions such as disclosing information to attorneys, accountants, or other parties.

Non-Solicitation Agreements

A Non-Solicitation Agreement prevents independent contractors from soliciting your employees while performing work for you or for a certain period after performing work for you. You can also include this clause in your employment contracts. The agreement can help reduce the chance you could lose a valuable member of your company to a competitor because another employee leaves or a contractor wants to help out a competitor.

Non-Compete Agreements

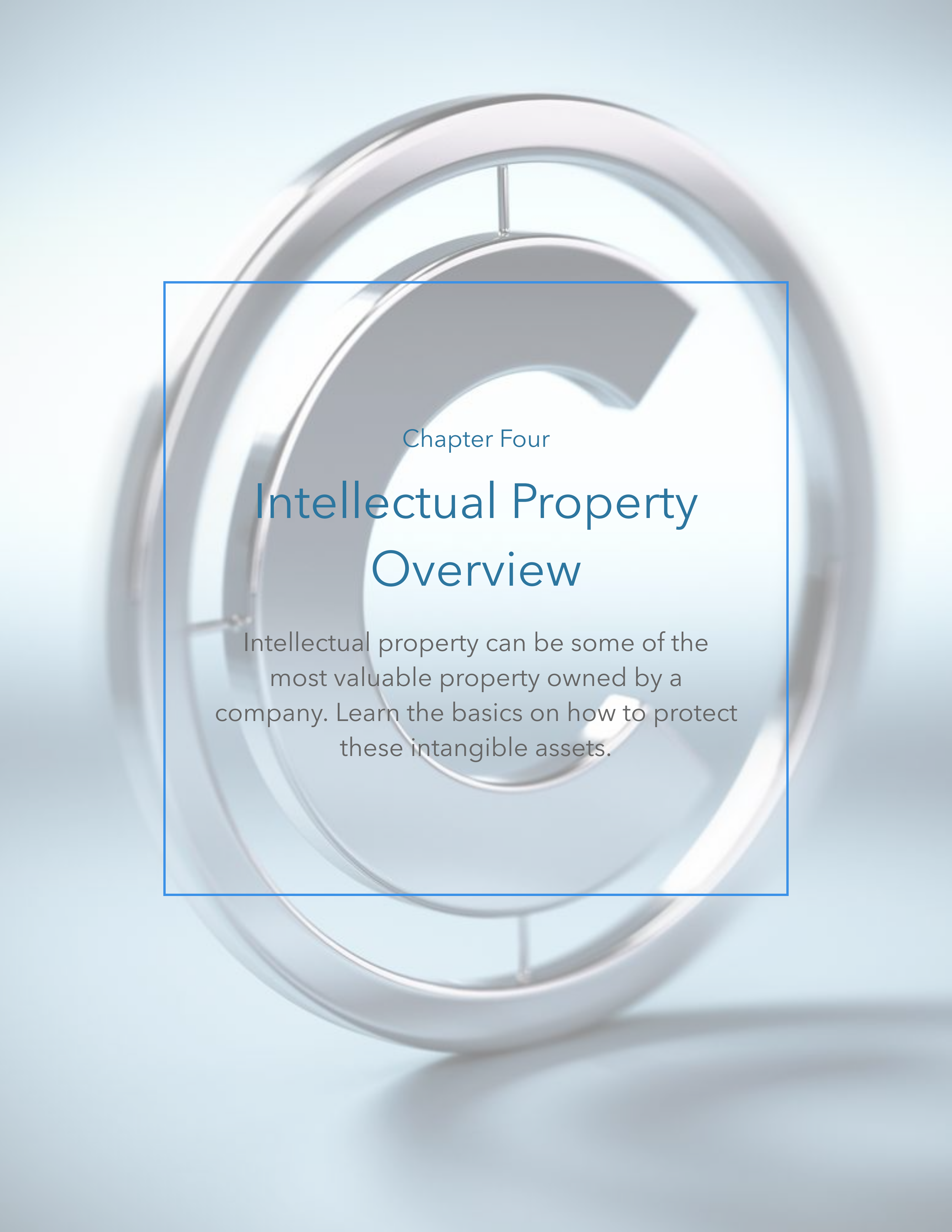
Non-Compete Agreements are important for key employees who could leave your company to open their own company or work for a competitor. You may also consider using a non-compete clause in your contracts for independent contractors. A Non-Compete Agreement cannot be overly broad or unduly restrictive, or a court will not enforce the agreement.



Important Tip: Always Use Written Agreements with Employees and Contractors

Regardless of the size of your business, you can always benefit from using written agreements to define relationships with employees and independent contractors. Developing employment-related contracts should be a priority before hiring your first employee or contractor.

The bottom line – Understand the differences between employees and independent contractors to avoid costly tax penalties.



Chapter Four

Intellectual Property Overview

Intellectual property can be some of the most valuable property owned by a company. Learn the basics on how to protect these intangible assets.

Intellectual Property Overview

Intellectual property can be some of the most valuable property owned by a company. You might not think you need to worry about protecting intellectual property because you will never own intellectual property. However, did you forget about your business name?

Your business name can be a valuable piece of intellectual property. Over the next few decades, your hard work in building a brand that customers can rely upon and that attracts new business because of name recognition could pay off when you are ready to sell your business. However, your hard work could be stolen if you do not try to protect this piece of intellectual property.

What are the Four Basic Types of Intellectual Property?

#1 Trademarks

A trademark is a phrase, word, design, or symbol that sets your services or goods apart from other similar services or goods. Logos, business names, and slogans are examples of intellectual property that can be protected by a trademark. By applying for and receiving a trademark, you can prevent competitors and others from using your name, logo, or similar mark to identify their company, product, or service. Because trademarks are associated with a specific good or service, they also help protect consumers who believe they are purchasing the goods or services from a specific company.

Your application for a trademark is likely to be denied if you choose a generic word or mark to identify your goods or services. A distinctive trademark is often a fanciful (Pepsi for a drink) or arbitrary term (Blackberry for a phone) that is not easily confused with another service or good. This trademark is usually the easiest to protect and considered a strong trademark.

Before filing a trademark application, you must search the USPTO Trademark Database to determine if the word, symbol, or design is already trademarked. You may also want to hire a professional trademark search company or a trademark attorney to ensure the trademark is available before spending the time and money to file the trademark application.

Intellectual Property Overview

#2 Copyrights

You apply for a copyright to protect creative works, including artistic, dramatic, musical, and literary works. Examples of intellectual property you may need a copyright to protect include software programs, business documents, presentations, website content, company jingles, and architectural works.

A copyright gives you the exclusive right to:

- Reproduce your work;
- Distribute your work;
- Display your work publicly;
- Perform your work publicly; and,
- Create derivative works of your work.

You cannot copyright an idea. You can only copyright the expression of your idea or the product of your idea. Even though you do not have to register your work for it to be protected by the Copyright Act, you are strongly encouraged to register your copyright with the U.S. Copyright Office if you need to enforce your rights in court. A copyright typically lasts for the life of the creator plus 70 years.

#3 Patents

Patents protect machines, inventions, and processes. It is important to apply for a patent as soon as possible to prevent someone else from obtaining a patent on a similar invention or using your invention. To receive a patent, you typically need to meet three primary requirements:

- The invention must be something new that was not known to the public before you filed your application;
- The invention serves a useful purpose; and,
- The invention would not be obvious to someone with education or skill in that industry.

You may obtain one of three type patents. Design patents are used to protect ornamental designs for products. Utility patents protect machines, processes, and composition of matter. Plant patents protect the discoveries of some types of new plants.

Intellectual Property Overview

#4 Trade Secrets

Protecting your company's confidential information is important. Trade secret laws can help you prevent employees, independent contractors, and other parties from accessing, disclosing, or using your company's confidential information.

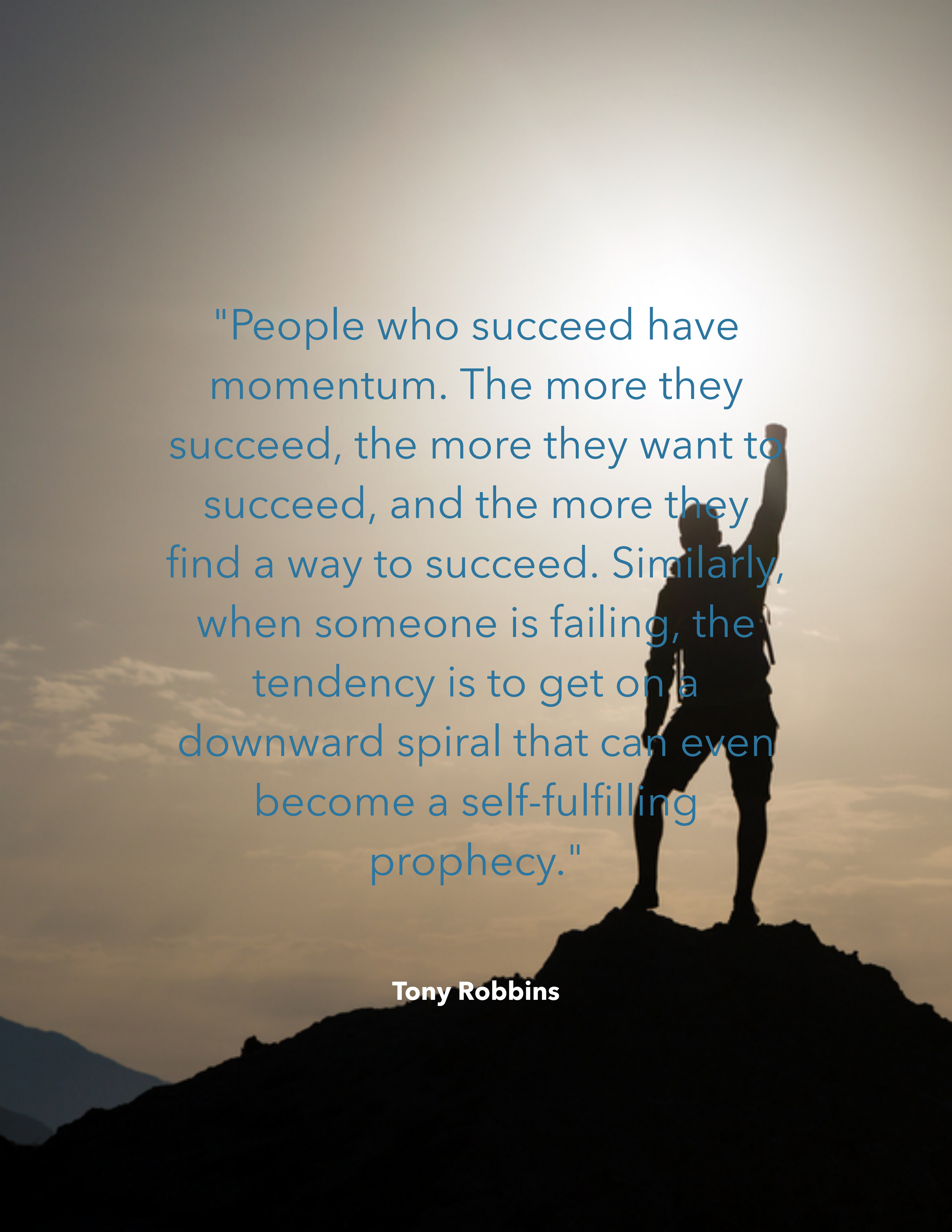
Unlike copyrights, patents, and trademarks, there is no registration for trade secrets. Therefore, you need to take internal steps to protect your trade secrets such as using Non-Disclosure Agreements, stamping information as "Confidential," and limiting the disclosure of information.

Do You Need Help Protecting Intellectual Property?

Protecting intellectual property is a crucial step in protecting your company's most valuable assets. However, applying for patents, trademarks, and copyrights with the U.S. Patent and Trademark Office (USPTO) can be complicated. You can find information online to file the applications yourself, but you may want help.

If you want to hire a professional to help you with your USPTO application, you need to ensure you avoid scams. The USPTO has information, resources, and programs online for businesses seeking assistance with a USPTO application, including information about how to avoid scams.

The bottom line – Protect your intellectual property by applying for copyright, trademark and patent protections and actively enforce your rights.


"People who succeed have momentum. The more they succeed, the more they want to succeed, and the more they find a way to succeed. Similarly, when someone is failing, the tendency is to get on a downward spiral that can even become a self-fulfilling prophecy."
Tony Robbins

Chapter Five

Contracts Basics

Every business needs a set of contracts that govern the relationships it will enter into with partners, employees, suppliers, and customers.

Contracts Basics

Every business needs a set of contracts that govern the relationships it will enter into with partners, employees, suppliers, and customers. A contract is an agreement between two or more parties. Even though an oral contract may be enforceable in most situations, written contracts are preferred because a written contract is easier to enforce and does not rely on a party's memory or interpretation.

For a contract to be enforceable, it must have at least three elements:

- An offer by one party to another party;
- Acceptance of the offer by the other party; and,
- The exchange of something of value, which can be a payment, goods, services, or forbearance.

The laws related to contracts vary by state. For instance, some contracts must be in writing and signed by all parties to be enforceable. Therefore, business owners are encouraged to research state-specific contract laws to ensure their business contracts comply with all state contract laws.

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Why Do I Need to Use Business Contracts?

Using business contracts has several important advantages including:

- Clearly defines each party's expectations and obligations;
- Minimizes the risk of disputes and litigation;
- Creates better terms and deals because negotiating forces parties to consider all potential scenarios;
- Improve the resolution of disputes by outlining how disputes will be resolved, such as by using mediation or arbitration instead of litigation;
- Prevent misinterpretation of terms and agreements and future misunderstandings;
- Protect intellectual property and other business assets; and,
- Specifies how either party may end the contract before all terms are fulfilled.

A key factor to remember when drafting contracts is to use plain language.

While some legal terminology must be included in a contract to protect your business, it is usually advisable to avoid "legalese". The contract should avoid ambiguities that could cause disputes and challenges to the terms. Ambiguities in a contract could render the contract or a portion of the contract unenforceable. Therefore, try to use plain language so that no term is subject to more than one interpretation.

Examples of Business Contracts

There are numerous types of business contracts that a company may use. Some of the common contracts used by businesses include:

- Employment Contracts
- Leases and Rental Agreements
- Non-Disclosure Agreements
- Partnership Agreement or LLC Operating Agreement
- Indemnity Agreement
- Purchase Order, Sales Agreement, and Bill of Sale
- Security Agreement
- Noncompete Agreement
- Independent Contractor Agreement
- Warranty Agreements
- Confidentiality Agreement
- Sales Representative Agreement
- Franchise Agreement
- Receipt and Release

It may seem overly cautious to have a contract to define each business transaction you conduct. However, contracts protect from potential risk and liability that could be very costly for you and your business. With that in mind, every relationship should have a contract and that contract should be customized to that relationship.

Elements of a Business Contract

The elements of a contract depend on the nature and purpose of the contract.

Some contracts will have elements that may not be necessary for all contracts. However, most contracts should always cover these elements:

- Identify each party subject to the terms.
- Obligations and responsibilities of each party.
- The level of performance required to satisfy the terms.
- Payment or terms of compensation.
- Detailed descriptions of goods and services.
- Breach of Contract provisions, including jurisdiction for disputes, governing law, recovery of attorney fees, mediation, and arbitration clauses.
- Entire Agreement Clause stating there are no other agreements between the parties regarding the subject matter other than the agreements within the contract.
- Provisions to protect intellectual property, including a statement that the company owns any intellectual property created by the other party, confidentiality agreement, and non-disclosure agreement.
- Terms for non-compete and non-solicitation provisions.
- Termination provisions and duration of the contract.
- Provisions for amending the terms.
- Severability clause so that if a judge orders one or more of the contract terms unenforceable, the remainder of the contract can remain in effect.
- Define how the parties must provide notice to each other (i.e. in person, by mail, by a certain date, etc.).

Before signing a contract, carefully review each term and provision within the contract to ensure the information contained in the contract is correct. Never sign a contract without reading the entire contract. If you do not understand any portion of the contract, do not sign the contract until you receive an acceptable explanation and revise the contract language to ensure all terms are clear and unambiguous.

Negotiating a Contract

Before a contract is reduced to writing, negotiate terms favorable to your company.

Some practical tips for negotiating a business contract include:

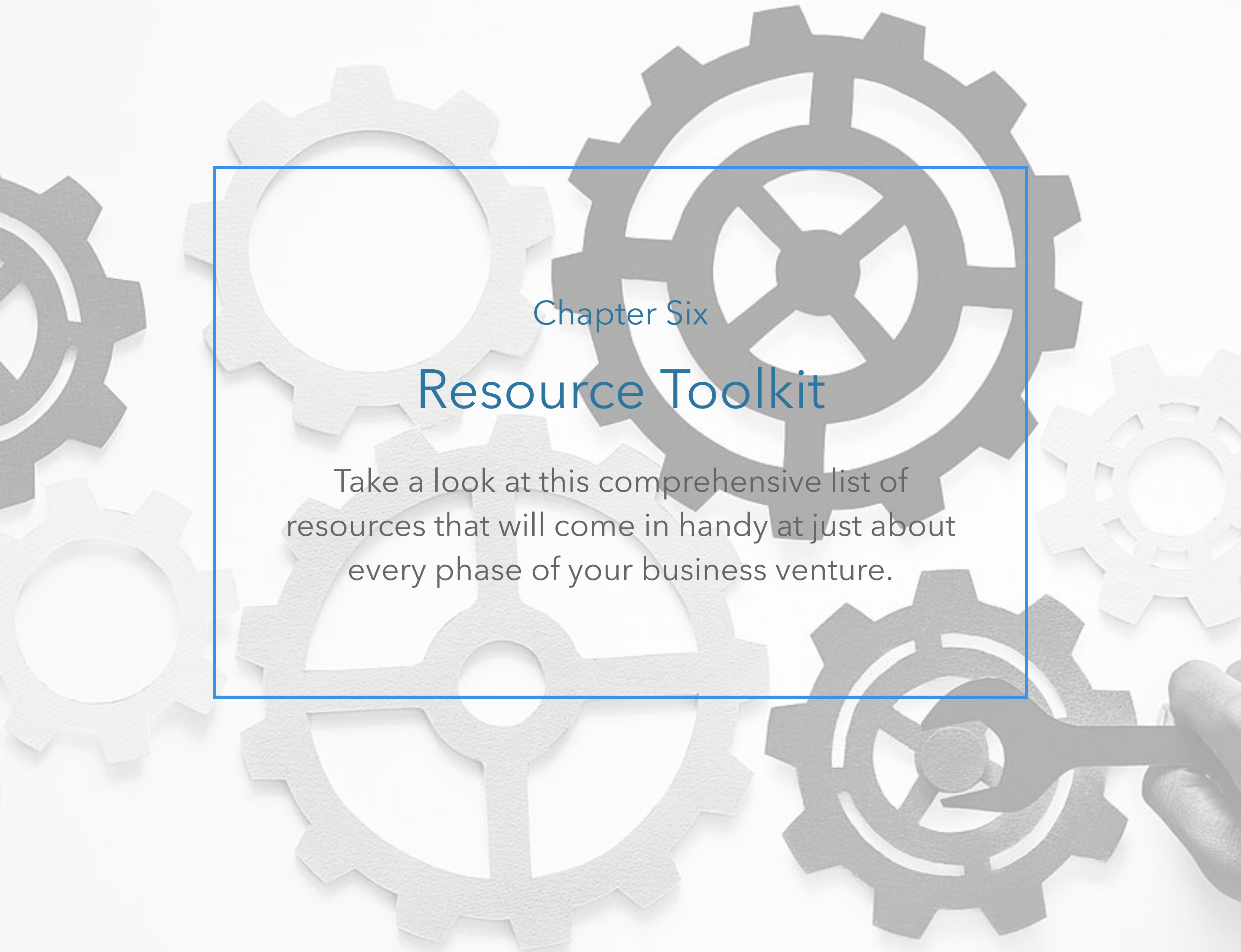
- Do not rush. You need to take as much time as necessary to ensure the contract terms are favorable and clear.
- Make a list of the terms you desire and your objectives. Prioritize those terms and determine how much you will compromise (and in what ways you will compromise) for each term.
- Research the facts, relevant law, and figures before you enter negotiations.
- Create a draft of the contract before meeting with the other party to ensure you know each term and condition you want to negotiate.
- Make a checklist of topics you want to cover during the negotiations.
- Always listen to the other party and consider their viewpoint before responding to their requests.
- Do not give away anything without getting something in return. Only concede on a term if the other party will give something in return.
- Be reasonable and willing to compromise. You will not receive everything you want, so you need to know before you begin negotiations what you will accept.
- Be positive and resist taking any comments personally or making personal comments.

If you are unsure about how to negotiate or draft a business contract, seek assistance from a legal advisor. Business contracts are binding, legal documents. Once you enter a contract, you are bound to the terms. Breaking a valid contract could be a costly mistake.

The bottom line -- Make sure you have custom contracts written to cover each business relationship you enter into.

"The way to get started is to quit talking and begin doing."

Walt Disney



Chapter Six

Resource Toolkit

Take a look at this comprehensive list of resources that will come in handy at just about every phase of your business venture.

Resource Toolkit

Take advantage of this comprehensive list of resources that will come in handy at just about every phase of your business venture.

PLANNING SERVICES

Develop Your Business Plan with this Questionnaire

Write Your Business Plan

Polish Your Business Plan with Enloop

Let the SBA Help You Fill in Your Knowledge/Skill Gaps

Get Mentoring with SCORE

DESIGN SERVICES

99Designs

Pebbled

Fiverr

Upwork

MANAGE FINANCES

FreshBooks

Sage40cloud

Xero

Mint

Gusto

ADP

GET FINANCING

AngelList

Kickstarter

Fundera

StreetShares

Resource Toolkit

MARKETING

Google My Business

Yelp

Moz

Hubspot

Buzzsumo

MailChimp

COMMUNICATIONS

Skype

Slack

Sococo

PRODUCTIVITY

Asana

Trello

Monday

Hive

Evernote

Jive

SHARED FILE STORAGE

Dropbox

Google Cloud

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SugarSync

SCHEDULING

Humanity

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Homebase

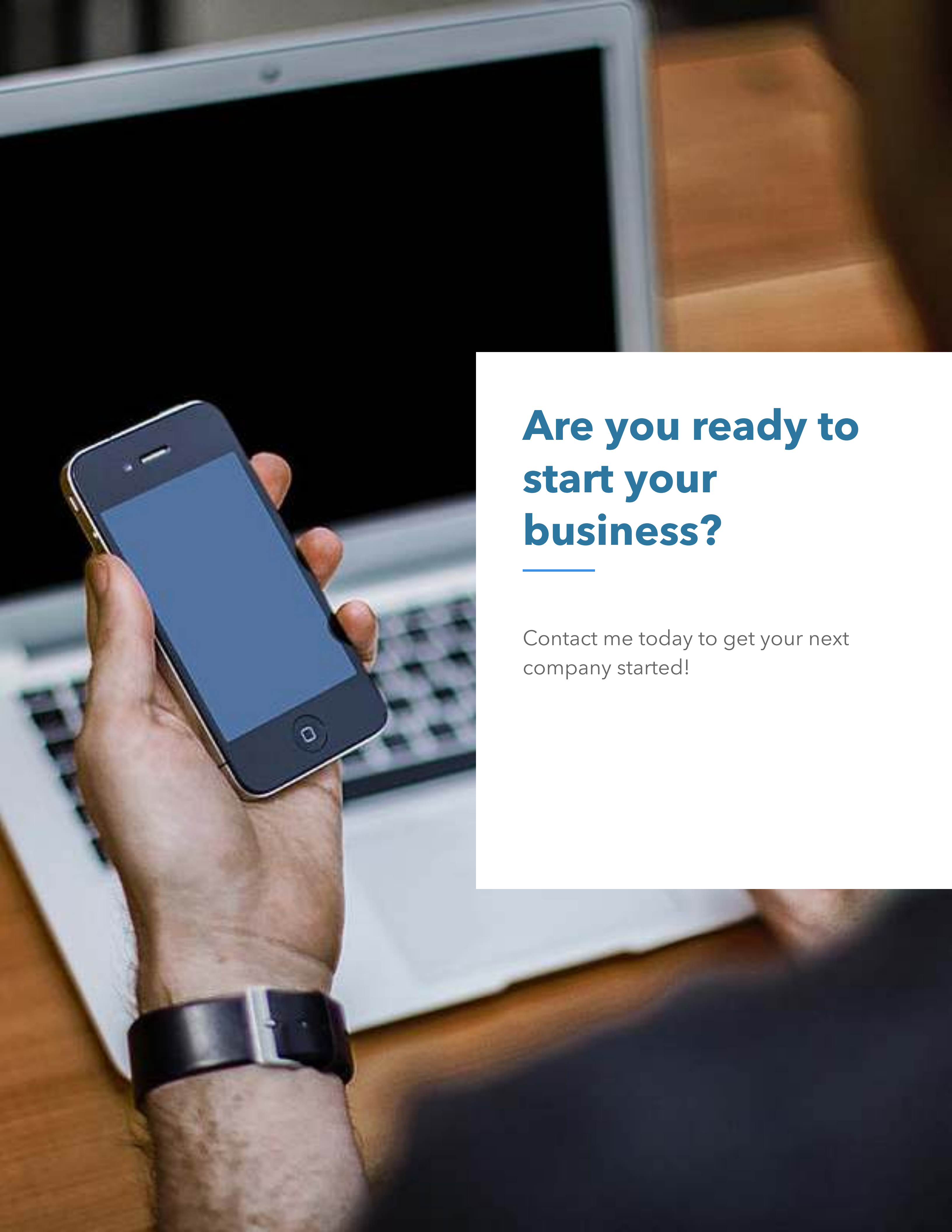
Deputy

SOCIAL MEDIA SCHEDULING

Hootsuite

Buffer

MissingLettr



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Contact me today to get your next company started!

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My clients work with me because I understand how important it is to protect both the businesses that they are building and the legacy they want to leave to their families - and to the world.

I assist innovative entrepreneurs in planning and implementing their businesses, taking into account tax compliance, exit strategies, and other estate-planning techniques to ensure their livelihoods and families are protected.

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