LEGAL SERVICES OF EASTERN MISSOURI

COMMUNITY ECONOMIC DEVELOPMENT MICROENTERPRISE PROGRAM

Here are 12 issues to consider as you start your for-profit business:

- Develop a Business Plan
- Choose a Business Entity
- Choose a Business Name
- Formation
- Obtain a Federal Employer Identification Number (EIN)
- Obtain a Missouri Employer Tax Identification Number
- Obtain a Business License
- Protection
- Regulatory Requirements
- Contracts and Commercial Leases
- Employees
- Intellectual Property

DEVELOP A BUSINESS PLAN

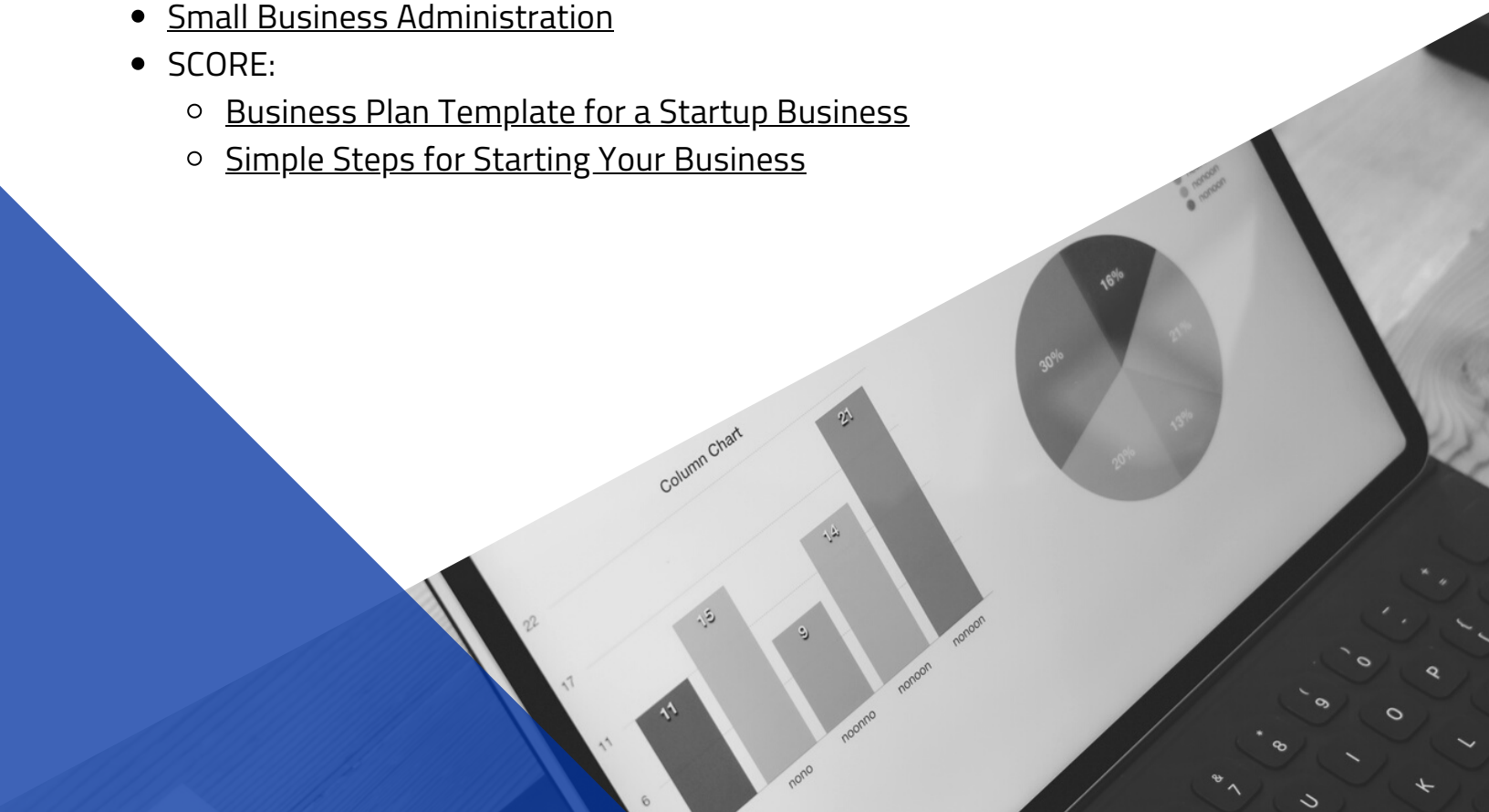
This is not a legal requirement, but the business' objectives should be clearly-defined at the outset. Having a written business plan helps to convey the business' objectives to lenders, customers, suppliers, management, employees, and professionals (i.e. lawyers).

Business plans should include the following information:

- An executive summary
- A description of the products or services being offered
- A summary of the business history, management, and goals
- A profile of the target customer
- An analysis of the competition and market trends
- Strategies for advertising and marketing
- A list of assets, liabilities, budgets, and timelines
- A forecast of sales and profits

Some agencies that can help draft business plans:

- St. Louis County Library
- St. Louis Public Library
- Small Business Administration
- SCORE:
  - Business Plan Template for a Startup Business
  - Simple Steps for Starting Your Business



CHOOSE A BUSINESS ENTITY

There are several business entity options: Sole proprietorship, Partnership, C-corporation, S-corporation and Limited Liability Company (LLC).
Each business entity has its own requirements and its own advantages and disadvantages. Below is a chart that compares the most common entities for entrepreneurs against each other. You should seek the advice of a lawyer before choosing or incorporating a business entity.

ISSUES	BUSINESS TYPE			
	Corporation	Limited Liability Company (LLC)	Partnership	Sole Proprietorship
Summary	A corporation is a legal entity that is separate and distinct from its owners. Governed by Shareholders and Board of Directors.	A Limited Liability Company is a corporation that can be operated as a partnership or a sole proprietorship. Governed by Members (owners).	A partnership is an association of persons who carry on as co-owners of a business for profit. Owned by two or more persons.	In a sole proprietorship, an individual operates a business as their own, without any formal structure or separation from the rest of their personal finances.
Formation	Articles of Incorporation Bylaws	Articles of Incorporation Operating Agreement	Partnership Agreement Can occur by default	No formal process
Liability	Board members and shareholders are not held liable for the actions of a corporations, but there are exceptions like fraudulent acts.	Member liability exposure is capped at the member's respective investments in the business.	Full liability. No limited liability. Each partner is responsible for all liabilities of the partnership.	Full liability. No limited liability.
Taxation	Double Taxation: Business's income is taxed, Income is also taxed when distributed to Shareholders	An LLC with at least two members may elect to be taxed as a Partnership or a C Corp. Default is partnership.	Each partner treats their earnings as personal income.	Anything earned by the business would be taxed as ordinary income.
Profit Sharing	Shareholders are paid dividends in proportion to their shares.	Members can choose how to share profits if the organization is being taxed as a partnership.	Default rule is 50/50 sharing. This can be changed by partnership agreement. The same rule applies to losses.	N/A
Annual Reporting	Yes	N/A	N/A	N/A
Annual Meetings	Yes	N/A	N/A	N/A

Please note: for simplicity, the rest of this document will focus on requirements for a Missouri LLC, as that is the entity that most entrepreneurs choose.

CHOOSE A BUSINESS NAME

To see if anyone has already registered to do business under your chosen business name, visit the Missouri Secretary of State's website and search businesses under Entity Name.
If no one has already taken your business name, you can either register your business or reserve the name for up to 60 days to be used for your future business. To reserve your business name, fill out the application and send it to the Secretary of State's office.

FORMATION

You will need the following information and/or documents to organize a LLC in Missouri.

- Registered Agent. This is a person who can receive important legal documents on the LLC's behalf. As a small business owner, it is common for the owner to act as the registered agent.
- Articles of Organization. This document forms your LLC and registers it with the state of Missouri. You can submit the Articles of Organization in-person, by mail, or electronically.
  - In-person or by mail costs $105 and the form is here.
  - Electronic submissions only cost $50 and can be completed once you create an account on the MO Secretary of State's website.
- Operating Agreement. This document lays out how your organization will be run. It also details other important information. This document is required by Missouri law for all LLCs.
  - An operating agreement covers many topics, which include how the members of an LLC will:
    - manage the company;
    - raise money;
    - allocate profits and losses;
    - handle the dissolution or liquidation of the company; and,
    - restrict members from transferring their ownership rights.



OBTAIN A FEDERAL EMPLOYER IDENTIFICATION NUMBER (EIN)

This is the federal tax identification number that will be associated with your business. You will use this number when you file your taxes. You obtain this number ***after*** you incorporate your business. An EIN is required to open a bank account in your business's name. This is a free service provided by the IRS. Please do not pay anyone to obtain this for you! You can apply online for your EIN from the IRS.

OBTAIN A MISSOURI EMPLOYER TAX IDENTIFICATION NUMBER

This is the Missouri state tax identification number that will be associated with your business. This is not required for all businesses but is for many. Call the MO Department of Revenue at 573-751-5860 to determine if you need to register your business with them. You can also look at the FAQs here. You can register on the Missouri Department of Revenue website.



OBTAIN A BUSINESS LICENSE

STATE

Check with a business counselor or an attorney to see if your business activity requires states licensure. Businesses that require special licenses to operate may need a license from the state. For example, most daycares are required to have a license in the state of Missouri.

CITY OF ST. LOUIS

Obtain a Graduated Business License. This must be renewed annually. You need to get this license if you plan to do business in the city, regardless of whether your business office is there or not. You may be required to have more than one business license or have additional requirements. Visit the St. Louis City License Collector's website for more information.

ST. LOUIS COUNTY

Most business owners in St. Louis County are going to need to apply for the Business Personal Property Registration. The form can be found here and is combined with a Merchant and/or Manufacturing License Application.

The St. Louis County Department of Revenue may also require an additional license, depending on the industry.

Individual municipalities may have their own business licensing requirements and there may be individual zoning and occupancy requirements. We recommend researching your specific address to determine additional rules and regulations or working with an attorney to confirm individual requirements.

PROTECTION

There are various forms of protection for the LLC and its members. Some types of protection include:

- **Open a Business Bank Account in Your LLC's Name**: If you mix your own money with that of the LLC's, you could lose the liability protection that the LLC structure gives you and end up personally responsible
- **Obtaining Commercial Insurance**: Your personal liability insurance will ***not*** protect your LLC.
- **Conducting your business as the LLC and not as yourself:** Sign the LLC's name on all contracts.

  Example of how to sign LLC's name on contract:

  ABC, LLC
  (Signature)
  John Doe, Owner of ABC, LLC
  Month, Day, Year
- **Use "Business Name, LLC" on all marketing materials**

REGULATORY REQUIREMENTS

Make sure you are operating your LLC according to the law. Some industries have specific regulations (for example, restaurants have special food safety regulations). You should also check for zoning restrictions in the area where you plan to conduct business, though this may be part of your business licensing requirements.



CONTRACTS AND COMMERCIAL LEASES

CONTRACTS

A contract is a written or oral exchange of promises to do or not do something. Having contracts in writing protects your business.

- There is less room for misunderstanding.
- Expectations are clear.
- Promises are taken more seriously when put in writing.

Spoken promises can be enforceable. But, it is harder to show a party promised to do something and then failed to do it, since nothing was written down. Make sure you understand the contract before you sign and sign all agreements in the name of the LLC, not your own name.

COMMERCIAL LEASES

It is important to read commercial leases carefully. Ask a lawyer if you can. Know what your responsibilities will be.

- Base Rent: will it be $X/month, $X/sq. foot, % gross sales?
- Who pays for utilities, property taxes, maintenance, and/or improvements?
  - Usually the landlord is responsible for structural repairs and Tenant for non-structural.
  - Who is responsible for things like snow and ice removal?
  - What about repairs of expensive items like an HVAC system?
- Get Insurance. This includes: general liability and casualty to protect people and property.
- Annual increases in multi-year leases (specify how increases are calculated).

Some properties may have pre-existing problems. If you are concerned, have the landlord state that there are no pre-existing environmental problems in the lease(e.g., asbestos, hazardous substances)

Landlords sometimes ask for a personal guarantee from the owner of a business in a commercial lease. Try to remove this clause.

Look out for confusing language and understand all terms before signing.

EMPLOYEES

Decide if you will hire employees or independent contractors.

The main difference between an employee and an independent contractor is: who has the right to control when, where, and how the work is completed?

- If you, the employer, want to be able to control when, where, and how the work is to be completed, you will need to classify your workers as employees.
- Missouri has many factors that decide if someone is an employee or independent contractor. For more information, ask a lawyer or go to the Missouri Department of Labor's Division of Employment Security guide to Classifying Employees.

After deciding whether you will hire employees or independent contractors, ask a lawyer for help understanding the laws for both types and for help filing the right paperwork.

Note: employees in Missouri are at-will. This means that you can fire them and they can quit for without cause, unless it's for a discriminatory reason.



INTELLECTUAL PROPERTY
LEGAL WAYS TO PROTECT YOUR IDEAS

TRADEMARKS

Trademarks protect words, symbols, and/or designs used to identify and distinguish a product, service, or business from others.

- Check to make sure you are not infringing on others by searching for your name, slogan, symbol, or design on Google, social media and the USPTO'S website.

There are three main ways to protect your marks:

- **Common Law**. Common law is free and only requires you to mark ™ (if selling a product) or SM (if selling a service) next to your business name, symbol, and/or designs.
- **State**. To get state protection, you must download the application through the Missouri Secretary of State's website here and pay a $55.00 filing fee.
- **Federal**. Federal protection can be expensive and is mainly important if you plan to conduct business nationally. It costs $250.00 per category.

COPYRIGHT

Copyrights protect original artistic or intellectual expressions fixed to a tangible medium (e.g., curriculum, books, computer programs, databases, photographs, web pages).

Copyright is created automatically, but you can still add a © or "copyright" and the year ("copyright 20**"). You can also register your copyright with the Library of Congress (US Copyright Office). You can sue for copyright infringement only if you have registered your Copyright with the US Copyright Office.

Avoid infringing on others' copyrights by generating your own pictures, images, and marketing materials. Do not copy software—when in doubt, ask.

INTELLECTUAL PROPERTY
LEGAL WAYS TO PROTECT YOUR IDEAS

TRADE SECRETS

Trade Secrets is business information that has independent economic value because it is a secret (for example, recipes, client lists, business information, software code, business processes). You can protect your trade secrets by drafting a non-disclosure agreement for employees to sign to protect your trade secrets. Have people sign this agreement before sharing secret information about your business.

PATENTS

A Patent is the right to exclude others from making, using, or selling an invention.
There are two main types:

- Design Patent - protects what a product looks like
- Use Patent - protects how the product works

Patents have more in-depth legal requirements. If you think you have a patentable design or invention, consult with an attorney. Visit http://www.patentprobono.com for further guidance. This is a free service.

WEBSITES

When contracting with someone to design a website, get a written contract that gives you ownership of the material created on the website.

Get an assignment agreement if someone else makes your website or material for it. This agreement will make sure that you own the website and not the website designer. Use your own pictures and material.

When using someone else's materials, get written permission from the author or creator of the materials.

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COMMUNITY ECONOMIC DEVELOPMENT - MICROENTERPRISE PROGRAM

Disclaimer:

Legal Services of Eastern Missouri's Community Economic Development Microenterprise Program made this guide to educate on Microenterprise-related legal topics. This guide is for general information purposes only. While we try to make it as accurate and up-to-date as possible, guidance can and will change. Your own situation may be fact-specific and we can only give legal advice to those we have current representation agreements with. Nothing in this guide constitutes legal advice from Legal Services of Eastern Missouri.

If you have any questions, please speak to a lawyer. This guide is not an advertisement or solicitation.

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ced@lsem.org