Business Formation, Separation, and Choosing a Name

Business Formation

Flaster Greenberg forms businesses in all industries, from renewable energy to healthcare to e-commerce to everything in between. We take our clients through every step of forming the new business including choosing an entity, picking a registered agent, choosing and protecting your business name, creating a partnership agreement, and more.

Form of Entity

The first step is the formation of entity. We help choose the right form of entity for your business, including:

- A limited-liability company.
- A subchapter S or subchapter C corporation.
- A professional corporation.
- A joint venture.
- A limited partnership or limited liability partnership.
- A hybrid entity.

Our skilled business and corporate law attorneys also weigh the factors that are relevant to your business, and seek to:

- Maximize tax and accounting benefits.
- Protect you and the other owners from personal liability.
- Give you a path for business succession.
- Attract investors and potential buyers.

Our experienced paralegals can create a new entity and obtain a federal employer identification number (FEIN) for you overnight, if not sooner, to avoid delays in starting your business.

Registered Agent Services

Next, we can help you determine a registered agent. All states require entities to have a "registered agent." In New Jersey, for example, the registered agent's address is designated by the business as the location for the business to receive official legal documents, such as lawsuit papers and subpoenas. We offer full registered agent services, ensuring that your legal needs are served under one

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roof.

Business Name Availability & Protection

Now, our team can help with your business name. Within minutes we confirm the availability of your business name by checking state filing records. And through our intellectual property practice group, we offer full legal protection for your intellectual property, including your business name, throughout the United States and around the world. Scroll down to read more in depth about choosing a business name and protecting it.

Partnership Agreement

Finally, it is extremely important to have a partnership agreement in place. Partnerships can be complex depending on the scope of business and the number of partners involved. To reduce the potential for complexities or conflicts, the most important step for your business is creating a robust partnership agreement. This agreement will dictate how a small business will operate under two or more people. It spells out each partner's responsibilities, how much each partner owns, allocation of profits and losses, how disputes will be handled, and the rules for handling the departure of a partner due to death or withdrawal from the business.

With thousands of partnership agreements under our belt, our business attorneys can create an agreement that is right for your business and partnership. Learn more here.

Choosing A Business Name

Your business name is the cornerstone of your brand. A strong business name helps a business stand out from the crowd and sells its products or services on a day-to-day basis. The best names – Rolls Royce®, Nike®, and Amazon®, among others – carry powerful and positive messages that can give a business a tremendous competitive advantage over others.

A good name is an asset and can act as a powerful magnet for investment capital and even substantially increase the price for which a company is sold. But it's important to follow your state's naming guidelines and pick a name that is different from a competitor's name. It's also important to choose a name that people can spell, pronounce, and remember. Plus, it should be web friendly.

Continue reading for more detailed tips about choosing a business name. Please don't hesitate to contact one of our business and corporate law attorneys listed below with any questions.

How to Choose a Business Name

Speak with a marketing professional about choosing a name because, in general, business owners probably spend too much time deciding on the name of their company and too little time thinking about brand names for their products or services.

In choosing a name, a business owner often must choose between a descriptive name and a more abstract name – for example, "Maple Avenue Computer Consulting" versus "Xenephon." The first quickly tells potential customers what the company does and where it is located, while the second may have more potential as a brand because the owner begins with a blank slate (e.g., Starbucks™). In weighing the balance, owners should know that building a brand from an abstract name (Amazon, E-Bay, etc.) requires a significant capital investment.

Company names and brand names are not valuable by themselves. Names become valuable because of the companies and people with which they are associated, and the resources invested to promote them.

Checking Availability of Your Business Name

It's important to check the availability of your business name because no name is a good name if someone else is already using it. The first step is to check whether any corporation or other business entity has registered the name with the state – a service we can provide quickly and cost-effectively. A second step is to Google® the name. For some businesses, such as a service business operating within a limited geographic area, these steps may be sufficient.

A business owner intending to operate within a larger area or seeking greater certainty can engage the services of a commercial search firm. It is important to note that the results of these searches are not always clear and should be reviewed carefully with your business and corporate law attorney.

Protecting Your Business Name

A business acquires some "common law" rights to a name merely by using it – without filing anything with the government and without involving lawyers. By virtue of these common law rights, the business can generally prevent competitors from using the same name within the same market area. These common law protections may be perfectly sufficient for some businesses and woefully inadequate for others. For example, a business that intends to expand geographically may find little comfort knowing that its name is protected only within a small area.

Contrary to a common belief, registering a company name with the state by forming a corporation or other entity provides no real protection. State filings are simply a matter of bureaucracy – the state wants to make sure that no two names are confusingly similar on its own records.

For real protection the business owner must consider a trademark filing. Filing for a state trademark may be adequate for a business that intends to operate within a single state. More typically, a business that wants to protect its name should consider a federal trademark filing with the U.S. Patent and Trademark Office. A federal filing provides two important benefits:

- Federal registration constitutes "constructive notice" to all later users in all locations.
- Federal registration permits an action for injunctive relief or a suit for damages (including profits, costs, treble damages and attorney's fees) against an infringer. In such a suit, registration has certain evidentiary value, including as evidence of the registrant's ownership of and exclusive right to use the mark.

Once granted, a trademark lasts forever. This contrasts with both copyrights and patents, which have limited statutory lives.

Not every name can be trademarked. A name that is "merely descriptive" of the product or service being provided is not eligible for trademark protection – "Xenephon" can be registered; "Maple Avenue Computer Consulting" cannot. However, even where a name alone cannot be registered as a trademark, it may be possible to register the name together with a distinctive logo. Learn more about the firm's trademark practice here.

Purchasing Domain Names

Once you pick a web-friendly name, you must now acquire all the internet domain names related to the chosen name. In the early days of the internet, names could be purchased easily and at nominal cost. Today, names can be increasingly difficult and expensive to acquire.

Business Separation

The breakup of a business partnership can be a very stressful and costly process. Whether because of deteriorated personal relationships, financial strains, an aging partner who is seeking an exit strategy, a junior partner wanting to elevate his/her position or a poorly crafted business model, disputes may escalate to a level where the parties' differences are (or at least initially appear to be) irreconcilable.

There are no cookie-cutter solutions to these complex situations. Each business and every business relationship is unique, shaped by a wide variety of factors, including the personal attributes, emotional issues, and the talents, contributions and characteristics of the individuals involved.

With many years of experience counseling business owners at every stage of the business lifecycle and litigating business disputes, Flaster Greenberg's attorneys are uniquely positioned to help address and resolve a myriad of legal issues faced by our clients in the context of a business separation. Working together with our clients, our priorities are:

- Achieving a favorable economic result
- Preservation of the business and its assets
- Minimizing the adverse impact of a breakup on the business
- Avoiding litigation

To these ends, our team works together to creatively structure the best solution for our clients, bringing objectivity and sensitivity to what is often an intensely emotional process.

Broad Capabilities

Keeping the best interests of our clients in mind, our team of business transaction attorneys works to facilitate an arrangement among the parties that best satisfies our clients' present and future personal and business goals. The advantage for our clients is that our team of attorneys has deep experience in all areas of the law relevant in business divorce matters, including:

- Mergers, acquisitions, divestitures, and business valuations
- Corporate governance
- Shareholder, partnership, operating and joint venture agreements
- Financings and other loan matters
- Tax implications
- Bankruptcy and restructuring matters
- Litigation

Options and Alternatives

Our attorneys are keenly aware of the significant cost of litigation, both financially to the individuals involved, as well as the adverse impact on an operating business. They propose creative alternatives, while involving litigators to best position in the event litigation becomes unavoidable. The legitimate threat of litigation through involving an experience litigator early in the process has been proven to facilitate the settlement process. Mediation and arbitration are often pursued if all parties are open to working toward an amicable resolution.

We craft settlements that have involved dissolution of the business, buy-out of the business by one or more of the partners or shareholders, sale of the business and restructuring the company or parties roles, among other possibilities.

If you have any questions about forming or separating a business or choosing a business name, do not hesitate to contact one of our business and corporate law attorneys listed below.