

Business Check Up

Business Information

Business Entity: _____

Contact Person: _____

Telephone _____ E-mail Address _____

The purpose of this worksheet is to review an existing business's structure and documents prepared by a different attorney or the clients themselves. A proper business plan will address the following 50 issues. How does yours compare?

	Document/Provisions	Satisfactory	Needs Attention	N/A or Don't Know
CORPORATE FORMATION				
	<p>Entity Formation</p> <p>A limited liability entity will help shield the owner's personal assets from creditors. Is this entity incorporated or formed as a limited liability company?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Choice of Entity</p> <p>Was this entity formed correctly for the type of business being operated? (<i>E.g.</i>, if the business is to carry on a professional practice that precludes LLC formation, was the business properly formed as a professional corporation?)</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Foreign Qualification/Registration</p> <p>Is the entity registered in each jurisdiction where it conducts business?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Share Issuance</p> <p>Were all shares and membership interests granted properly?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	Statements of Information Was the initial statement of information filed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	S-Corp Election Was the S-Corp election made on time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Governance Documents Does the entity have Bylaws, Operating Agreement, Partnership Agreement, etc.?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Minimum Profit Distributions Do the governing document provide for minimum profit distributions to cover quarterly estimated taxes for the owners?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CORPORATE MAINTENANCE				
	Annual Meetings Have all required annual meetings been held in accordance with the governance documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Minutes & Resolutions Have minutes of meetings been kept and resolutions adopted?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Capital Contributions Have all capital contributions been documented appropriately and correctly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Equity Transfers Have all equity transfers been conducted in accordance with the governance documents and documented appropriately and correctly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	<p>Minimum Franchise Tax Fee</p> <p>Have all FTB fees been paid on time? Failing to pay the FTB minimum fee can result in the entity being FTB suspended.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Owner/Shareholder Loans</p> <p>Have all loans to and from equity interest holders been documented properly (resolutions, promissory notes, etc.)?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Corporate Transparency Act (CTA) Compliance</p> <p>If you are a business that qualifies as a “reporting company” for purposes of the CTA, have you filed your Beneficial Ownership Information (“BOI”) report with the Department of Treasury?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OWNER AGREEMENTS				
	<p>LLC Operating Agreement/Partnership Agreements</p> <p>New legislation effective on January 1, 2018 will change the way businesses that are taxed as partnerships will be audited by the IRS that will have a significant impact on current partners’ rights and obligations—do your agreements have the necessary language to protect you?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> Partnership/Company Representative Language 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> Limit on Partnership Representative’s Authority 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> IRC § 6221(b) Opt-Out Guidance 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> Restrict transfers that violate IRC § 6221(b) 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> Compel prior year partner’s participation to correct audit deficiencies per IRC § 6225 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	<ul style="list-style-type: none"> • IRC § 6226 Election Guidance 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Buy-Sell Agreement</p> <p>A buy-sell agreement prescribes what happens to equity interests if an owner dies, quits or retires, gets divorced, goes bankrupt, loses their license, etc., and can help avoid costly litigation. Do the parties have a validly executed buy-sell agreement? [If this item is red, then the remainder of the buy-sell agreement questions will be likewise red.]</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Triggering Events</p> <p>A buy-sell agreement should cover the following triggering events:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Death 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Disability 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Retirement 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Termination of Employment 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • First Rights of Refusal 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Marital Dissolution 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Managerial Deadlock 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Bankruptcy 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Loss of Licensure 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Expulsion of an Owner 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	<p>Formula Price</p> <p>Does the buy-sell set out a mechanism for determining the price of the equity that will be bought out? If it is a formula price, is that formula still appropriate for the type of business?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Fixed Price</p> <p>If buy-sell uses a fixed price, is that price outdated or does it need to be revised?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Buyout Provisions</p> <p>Does the buy-sell provide how the interests that are being bought out will be paid for?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Alternative Dispute Resolution</p> <p>Non-court resolution is often faster, less expensive, and less emotionally draining. Does the agreement provide for mediation and/or arbitration?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Non-Compete Provisions</p> <p>When a partner or other equity holder exits the business, provisions prohibiting the leaving partner from competing can be a valuable asset. Does the buy-sell agreement place restrictions on the leaving party's ability to start or work for a competing business?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Non-Disclosure Provisions</p> <p>When a partner or other equity holder exits the business, provisions prohibiting the leaving partner from disclosing company secrets can be an important asset to the company. Does the buy-sell agreement place restrictions on the leaving party's ability to use or disclose information learned while with the company to a third party (or competitive business)?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	<p>Non-Solicitation Provisions</p> <p>When a partner or other equity holder exits the business, provisions prohibiting the leaving partner from soliciting either employees or clients, or both, can be helpful in avoiding disruptions and loss of business. Does the buy-sell agreement place restrictions on the leaving party's ability to solicit the business's employees or clients?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Drag Along/Tag Along Rights</p> <p>Drag along rights (which permit a majority owner to force minority owners to sell when the majority ownership interest is being sold) and tag along rights (which permit a minority owner to participate in a sale of the majority's interest) confer valuable rights on equity holders. Does the buy-sell contain drag along or tag along rights?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Founder's Rights</p> <p>Does the agreement make provisions for which party is permitted the continued use of the business name and other intellectual property?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
EMPLOYEES AND OTHER WORKERS				
	<p>Workers in Your Business</p> <p>Do you have employees or independent contractors? Workers in your business pose one of the highest risks to your enterprise. Having the correct documentation, insurance, and classification for your workers is imperative to keeping your business in good health.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Worker Agreements</p> <p>Do you have written agreements/offer letters for all of your workers?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	<p>Non-Compete Agreements</p> <p>Have you removed any clauses or language imposing a non-compete agreement on non-executive level workers?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Appropriate Classification</p> <p>Have you done an audit to determine whether your workers are appropriately classified according to the multiple criteria pronounced by the state and federal labor and employment agencies?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Required Notices & Pamphlets</p> <p>Were all new employees given the Wage Notice, Workers' Compensation pamphlet, and all other required notices when they commenced employment?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Registered your Independent Contractors (CA)</p> <p>It comes as a surprise to many entrepreneurs using 1099 contractors that they are required to register those workers with the California Employment Development Department. Are all independent contractors appropriately registered?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Employee Manual</p> <p>Does the business have an industry appropriate employee manual that all employees have acknowledged receiving?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Safety Policy</p> <p>Does the business have an industry appropriate Injury and Illness Prevention Policy (IIPP)?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Mandatory Paid Sick Leave Policy (CA)</p> <p>Does the business have a compliant mandatory paid sick leave policy?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	<p>Workers' Compensation</p> <p>Does the business have Workers' Compensation coverage that is appropriate for the type of risk to which employees are subject?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
INTELLECTUAL PROPERTY				
	<p>Company Name & Branding</p> <p>Does the entity know of any other businesses whose name or trademarks might ultimately conflict with their own and cause branding issues down the road as they grow?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Trademarks</p> <p>Has the entity gone through an audit or exercise to determine whether all trade and service marks have been appropriately documented and/or registered?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Third Party Infringement</p> <p>Are you aware of any third parties that may be infringing the business's trademarks?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Infringer Cease & Desist</p> <p>In order to maintain trademark protection, it is absolutely necessary to be vigilant with infringers—have all potentially infringing parties been issued cease and desist letters consistently?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Copyrights</p> <p>Does the trust document include a provision for use of a written list to designate beneficiaries of specific personal items? The provision should include instructions for how to interpret misleading or conflicting lists.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>Trade Secrets</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	Much of a business's intellectual property and knowhow are trade secrets (<i>e.g.</i> , Coke's cola recipe). Does the business have a Trade Secrets policy?			
	Defend Trade Secrets Act (DTSA) If there is a policy in place, does it contain the required DTSA notice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OTHER				
	Terms & Conditions Does the business's website carry industry appropriate terms & conditions, disclaimers, and end user licenses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Customer Agreements Does the business have customized contracts for the provision of their services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Vendor Agreements Does the business have written agreements with all of its vendors, and have the owners reviewed and understand the terms?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Merchant Processing Does the business accept credit card payments, and if so, is the business PCI (payment card industry) compliant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Commercial Lease Does the business lease space, and if so, has the lease been reviewed by an attorney?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Commercial General Liability Does the business have a CGL policy in place with appropriate coverage and limits?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	Malpractice Insurance Does the business have appropriate professional liability insurance in place?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Notes:
