



MIND YOUR BUSINESS

A Guide for the Entrepreneur, Growing Business, and Business Enthusiasts

By Jeffrey Davis, Esq.

Bringing Practical Legal Solutions to Small Businesses

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ABOUT JEFFREY DAVIS

I graduated from Vassar College with a B.A. in economics. In 2007 I received my J.D. from Seton Hall University School of Law. Prior to my work as an attorney I assumed a number of roles. I worked with KPMG LLP, a “Big 4” accounting firm. There I focused my attention on the tax consulting needs of Fortune 500 companies. Prior to that I worked in the financial planning world with Mutual of Omaha. However, it was my work in the construction industry as a union iron work, estimator, and project manager that gave birth to my passion and desire to know more about how businesses work, how business relationships function, and an overall desire to work with small businesses. It certainly helped growing up in a family of small business owners.

After law school I spent the better part of my professional career representing small businesses in both transactional and litigation capacities. I represented individuals in landlord-tenant matters, foreclosures, real estate transactions, business divorce litigation, contract disputes, construction disputes, and business formation. My goal was to understand as much as possible about the various aspects of businesses from contracts, financing, risk mitigation and dispute resolution.

During the course of my over 10 years working as an attorney, I am proud to have worked with a wide range of industries including construction, real estate, food & hospitality industry, wellness, fashion, medical services, cosmetics, and film production. I have been a member of various non-profit organizations, but currently focus my time lecturing for the Minority Business Development Institute.

My passion through the years has been in educating small businesses -- giving them the tools to succeed and evening the playing field against large organizations with the unfair advantage of financial and legal resources. My hope for this E-book and for the years to come is simply to educate and inspire.

INTRODUCTION TO BUSINESS PLANNING

The purpose of this e-guide is to explore in detail the key to starting a business and more importantly, sustaining a successful business.

As a colleague once told me, in order to get ahead you have to plan ahead. Without a plan of action for both the short term and long term, your business remains at risk from both a legal and financial perspective. Without a comprehensive plan of action for the growth of your business you're essentially playing "trial and error" with your business, your livelihood, your investment vehicle and your retirement plan. If you are "winging it" then you're not serious about making money, your business is really just a glorified hobby. So, if you're looking to get serious about your business, then you'll need to indulge in the process of creating a business plan, the foundation of all business planning.

“Dreaming is a form of planning”

-Gloria Steinem

Before we get into what a business plan is, how to create one, or why it's important, there is one essential principle that you must recognize as Dr. Stephen Covey stated: "all things are created twice". Before we act, we plan. No matter what it is, we as human beings make some conscious or subconscious decision or plan before we act -- whether for a nanosecond or over the course of days or weeks. The following discussion is about that planning process, slowing it down, breaking it apart, understanding its intrinsic value and making it work for you. This creation process comes before the execution process. To understand and appreciate the value of the creation process you must understand that the creation process you are about to embark on is equivalent to laying the

foundation for success. You recognize that success is not something that simply happens to you. Rather, it is a process you engage in, it is something that you do, it is something that you create. Nothing amazing happens overnight. All things take time to develop and time to solidify.

What is a business plan?

A business plan is the written documentation of your business planning strategy. Business planning is about setting goals and documenting the process for achieving those goals. In determining the appropriate process for success you may be forced to take inventory of your strengths and weaknesses.

“An opportunity to determine your core values, set goals, and determine the process for achieving both.”

Generally, a business plan consists of a narrative and several financial worksheets. The narrative is the body of the business plan. At the most basic level it should address numerous questions regarding the company purpose and description, products and services, marketing strategy, operational plan, management and organization, financial expenses, startup expenses and capitalization, and a high-level mid to long term financial plan. Ultimately your business plan is a recitation of your business's mission, goals, and process.

What's the value in a business plan?

Whether it be 45 pages or 5 pages the real value of creating a business plan is not in having the finished product in hand; rather, the value of a business plan lies in the process of researching and thinking about your business in a systematic and analytical way. Study and research if you are not sure what the facts are or trends are that pertain to your industry. Look at your ideas critically. It typically takes several weeks to complete a good plan, depending largely on the type of business, the structure of the business itself, and time you have to devote to

business planning. Most of that time is spent in research and re-thinking your ideas and assumptions. As tedious and involved as it may sound, the rewards are tremendous.

“Our particular security is in the possession of a written constitution”

-Thomas Jefferson

Think of your business plan as your constitution in much the same way the constitution of the United States is a document which contains certain values and truths that are essential to its existence, to its core. Think of your business plan as a document that lays out the constitution for your business setting forth the most essential broad unwavering values and principles that are critical to your ultimate vision. When viewed in this light, your business plan becomes a guide, a north star, as you navigate through the life-cycle of your business in the years to come.

“When the roots are deep, there is no reason to fear the wind”

-African Proverb

Having a business plan serves as a structured outline and guide allowing you to be flexible and fluid during turbulent times. Bruce Lee, a famous actor and martial artist, once said that the highest degree of form is formlessness. When people make things look easy and fluid, it's because they are working from a solid and developed foundation. A martial artist spends years practicing kicks, punches, and techniques but when it comes

time to executing those techniques in battle he must be fluid. He is only able to be fluid because he has built a strong foundation. The same principles apply to your business.

A business plan allows you to flow seamlessly with the changes that may arise during the course of the business lifecycle. It allows you to fall back on a solid base therefore keeping you centered.

How often should you engage in business planning?

While having a sound business plan is important for a variety of reasons (such as securing financing, identifying viable investment opportunities, developing sound business practices, protecting your source of income, and protecting your proprietary assets), it is important to recognize that a business plan is not a one-time process. It is part of the ongoing process of evaluation and reflection that is known as business planning.

The key to effective business planning is recognizing that a business planning strategy is rarely a fixed approach. As the needs and goals of the business change over the business's life-cycle, the business strategy also must change proportionately. In other words, as your business grows your business plan should address **both the changing risks and changing profit-opportunities**.

Business planning is not a one-time process. Businesses go through a business lifecycle. Think of it as a breathing living entity. It will mature and grow and go through growing pains like any other living being. Its needs will change and therefore so will your strategies for its continued sustainable growth. Business planning changes with the first dollar the business makes. Changing risks call for a change in the business plan. Changing profit opportunities call for a change in the business plan. Change is OK. It's natural and as such you should prepare for reasonably foreseeable changes your business may experience.

6 STEPS TO CREATING ANY BUSINESS PLAN

Where do you start?

Creating a business plan, in a very broad sense is a three-step process. It starts with (1) establishing your business's core values and principles, (2) determining the right goals, and (3) finally creating the processes or strategies to accomplish those goals. In addition to these three steps we added 3 more necessary steps for any comprehensive business plan.

Step 1: Establishing Your Business's Mission Statement

**“Start with the end in mind”
- Stephen Covey**

Let's look at the first step: establishing your business's core values and principles. As Dr. Stephen Covey so succinctly put it, always “start with the end in mind”. Where do you want to be? What do you envision for your business in a broad sense? What are the principles and values that are important to you and for your business? Ask yourself what do you envision your business being/doing? Is there some greater purpose? How are you going to be different than the rest? Where do concepts such as “integrity” come into play?

For me, I set out to exclusively represent small businesses. I saw small business owners lacking access to much needed legal and financial advisory resources which made it difficult for them to succeed. Lack of structure, organization, and guidance is a significant handicap for small business owners. My vision, my values, and my principles were founded upon my passion for working with small businesses, startups, and entrepreneurs. I therefore made it my mission to commit my time and expertise to the needs and specific financial capabilities of small businesses. My greatest reward is making lasting connections with business owners and providing them with the support they need in their personal journey for success. As such, my business plan, my mission statement

reflects those core values and vision.

In short, it's about the bigger vision for your business. The best place to start is with creating your own mission statement.

Step 2: Setting Goals

“Where your head points, the body will follow”

The second general step in the process of creating a business plan is setting goals most of which will be financial. Your goals will in a sense be borne from and guided by your values, principles i.e. your mission statement. Setting goals is critical for lasting growth. One of the biggest mistakes I see with business owners is (1) setting goals that are unattainable (2) setting goals that are too short-sighted or (3) setting goals that are too aggressive. The key to growth for any business is sustainable growth. Time and time again this principle has been tested. True growth comes from having well developed values, goals and processes, which are never an overnight process. There are no shortcuts to any of this, no quick fix -- no get rich quick scheme. Remember that you can have a fantastic process for achieving goals but if the goals are not right for your business, then all you're really doing is climbing the wrong ladder. You may also want to accept and recognize that goals, like the nature of your business, will change on a year-to-year basis and that it is important to re-evaluate your goals and processes periodically.

Finally, something to consider as your business grows: your overall ultimate goal as a business owner and really as the person investing everything into yourself is to create a business that is self-sustaining. You never want your business to be reliant upon just one individual. I've seen this happen too many times. I represented a business where the entire sales strategy was based upon just one individual who held all the cards. As a result of that strategy the business is currently failing to grow.

Your business should implement as many systems as possible that make it operational with or without you. It is a mistake 10 out of 10 times to be the center of your own universe. Ultimately you want to make delegating tasks a seamless and systematized process. The key to growth will be in your ability to let go. This means having a good contract management process, having written policies and procedures, and establishing a solid support team or sales force.

Step 3: Set Forth the Process for Accomplishing Your Goals

"Success does not consist in never making mistakes but in never making the same one a second time."

-George Bernard Shaw

Finally, you want to establish the right process for achieving your goals. You want to map out the steps to each goal. Your process may change as your business evolves and that's ok. When a process isn't working, exploring new strategies and new processes is part of the plan. Mistakes in your strategy are ok. Don't fear mistakes. Rather, fear the inability to formulate creative, logical, intellectual responses to those mistakes. But how do you know where to start? Start with surrounding yourself with the right business advisors who can guide you through the big picture as well as educate you on the critical legal, financial, marketing, and employment aspects of your business. In the next section I discuss creating the right team for your business. Suffice it to say, a great plan and a great process starts with the right advisors who can answer your questions, **and teach you the right questions to ask.**

Step 4: Establish Your Team

"Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishments toward organizational objectives. It is the fuel that allows common people to attain uncommon results."

--Andrew Carnegie

There is a substantial benefit to meeting with advisors, surrounding yourself with experts, and feeding off their insight and expertise when you are determining all of the strengths and weaknesses of your business – regardless of where you are in the business life-cycle. I have attended numerous investor events and one theme that resounds through each of their presentations is the significance of ‘establishing your team’. Investors especially want to understand (1) who is on your team and (2) how that adds value to your business mission. As such, your business plan should discuss: 1. who is part of your business 2. their specific expertise 3. their successes 4. how they will contribute to the profitability of your company 5. how they will mitigate against risks to your company, and 6. how they fit within your exit plan or exit strategy.

As mentioned before, the value in the process of putting together a viable business plan is always in the research and systematic self-analysis. But comprehensive research and true self-analysis can be very difficult to achieve on one’s own. That is why it is recommended that you, as a business owner, consider creating a team of independent advisors to ensure you have the right experts in your corner.

A board of advisors generally is optimal when it consists of 3-5 individuals each of whom brings something of value to your business either through their network, their experience, their expertise, or their business acumen. It is a valuable and highly strategic approach for assessing the strengths and weaknesses of your business, profit centers and risks, etc. and usually at a very low cost if those advisors are through your own network.

Another benefit to having a board of advisors is that it creates investor confidence. Investors appreciate when business owners know their limitations and have taken measures to ensure that business owners compensate for those limitations by surrounding themselves with the right experts.

How do you choose those individuals to be on your board of advisors? The key is three-fold. You want people that have solid business acumen, a track record of success, and knowledgeable about your industry. This dream-team of advisors may consist of certified financial planners, lawyers, business consultants, bankers, commercial real estate brokers, insurance professionals, and so on. It can also consist of experienced business owners that can give you objective opinions about your business decisions and operations. My suggestion is consider a CPA, business attorney, financial planner, insurance expert, and/or business coach.

Step 5: Determining Your Risks

I had the benefit of going to an event sponsored and hosted by Shark Tank's Kevin O'Leary. In that event there were a few speakers that were heavily involved in the world of money management. The goal of the whole event was to educate people on making sound investments. Interestingly, in the first two hours of the event I learned absolutely nothing about making sound investments because they told us nothing, except for one thing. They said,

“Take care of the downside because the upside will take care of itself”.

I thought long and hard about this and what it means for emerging business owners. In short, it means that you cannot have a conversation about the success of your business without seriously and comprehensively addressing all the things that can affect your bottom line. Here we specifically talk about the risks you as a business owner need to take seriously in order to preserve your company's assets i.e. your investment.

Risks can be categorized into two broad classes: internal risk and external risks. Internal risks are those things that happen within your organization that can negatively impact your business. External risks are those things that are borne from outside your business such as third-party lawsuits, catastrophic events, death, and disability. Other common external risks your business plan should address are things such as: competition, existing market conditions, anticipated market conditions, political climate, and the time it takes to become an established business.

How do you as a business owner protect from these kinds of external risks? Your protection comes from things such as a will, general liability insurance, life insurance, disability insurance, buy-sell agreements, and properly drafted contracts between your company and your customers or service providers.

A catastrophic event such as fire, flood, damaged utilities (think temperature control and sprinkler systems) can bring your business to a standstill. The solution? Sufficient comprehensive commercial insurance coverage. What about a lawsuit from a vendor, supplier, customer, or service provider? These are not always avoidable but the risks associated with these disputes can be mitigated through properly drafted contracts or service agreements. What about your inability to work because of death or disability? The solution is a hybrid between insurance (life or disability insurance) and properly drafted business agreement such as a buy-sell agreement which would ensure that there would be a continued stream of income or a buyout of your shares altogether (funded generally by insurance paid for by your company).

Internal risks are better understood as the risks inherent in the internal relationships within your business. Your business has multiple levels of internal relationships, each of which are integral for the survival of the

business. When these relationships fail the business is subject to tremendous risk. To put it another way, when you have not clearly set forth the parameters, terms and conditions of each of these relationships, your business is at risk. The business's internal relationships consist of two basic categories: (1) business owners and (2) employees. When we talk about "business governance" we refer to these internal relationships. Documenting these internal relationships is critical to the survival of your business especially in the case where there is more than one business owner involved.

“All business relationships are dynamic.”

All relationships are dynamic and as such that means they are sometimes unpredictable, complex, emotional, and even irrational. As a business owner you need to account for these factors in human relationships and determine the best method for minimizing the side effect of being human. In other words, you need to create as much certainty and structure in the relationships within your business as possible. Doing this is accomplished by properly documenting the relationship, defining the parameters, memorializing the goals, and outlining the expectations.

Often problems come into play with the closely held or family owned business where documentation is lacking (because of over-dependence on prior relationships and trust). In these cases, the business suffers when the business owners can no longer agree on how to properly operate or manage the business. Internal disputes or "business-divorce" cause the business to hemorrhage money internally as operations come to a halt and the business owners spend tens of thousands of dollars on legal fees, forensic accountants, and expert valuations.

More often than not these types of disputes can be avoided substantially when the business owners take the time and spend the money to properly document their business governance. Solidifying and identifying the

expectations, goals, and responsibilities of the respective business owners will ensure the continuation of the business as a going concern when the business owners come to a point of disagreement as to management.

One of the most important documents available to a closely held or family owned business is the buy-sell agreement. Usually funded by insurance or disability policies, the buy-sell agreement sets forth an objective mechanism for valuing the business which in turn significantly reduces the costs of any business-valuation related dispute. Business governance documents including an operating agreement (for the LLC), shareholder agreement and bylaws (for the corporation) and a partnership agreement (for a partnership) are also essential if your business has more than one owner. Through these documents you outline all of the expectations and obligations of the business owners.

There is one universal truth I've come to understand as both a business owner, serial entrepreneur, business attorney, and litigator. Relationships, including business relationships, fall apart when expectations are no longer being met. But it goes a little deeper than that. Expectations are often not met because people are not making effective efforts to communicate and document their expectations. I'll admit, setting forth your expectations in a clear and uncompromising way can be challenging if not daunting. But it is worth the effort.

"How can this be?", you might ask. "I've known Jim for 10 years and before we had this business together we never had an argument". Well, running a business is a much different relationship than being part of a long-term friendship. The mechanisms that allow for a friendship to work do not automatically sync up, or even make sense, when it comes to running a business. This is why it is important that business owners engage third parties to assist them in outlining their expectations before hanging up the shingle.

The best place to start when assessing risks in your business is with a qualified business attorney. A business attorney should sit with you and evaluate your risks and then be able to identify the right CPA and financial planner to address specific financial risks.

Step 6: Determine Your Exit Strategy

The most important aspect of any business plan, especially for any potential future investor is the “end game” or the “exit strategy”. The term “exit strategy” refers to your strategic plan to remove yourself from the business such as in the case of selling your business (a buyout or acquisition), merging your business with another business, franchising your business (whether formally or informally), or passing your business on to your children/family. Ideally you are removing yourself from your business in a scenario that is profitable or financially viable. Investors are particularly interested in your exit strategy because, if your business is successful, when you finally sell your business investors will have an opportunity to see a substantial return on their investment and “cash out”.

Of course, investors want to know that you as a business owner have determined your market risks and your profit strategy /business model. However, having those things in place should almost be a given for any business looking for a substantial investment of cash. Knowing how you will make money or what the basic risks to your profit are does not separate you from the herd. Having a viable exit strategy however will separate you from the herd because it demonstrates that you have anticipated your company’s growth opportunities 5 to 10 moves ahead of the game.

The next question is, how do you determine the specifics of your business exit strategy? The answer is research. Look at companies in similar industries. Determine how long, and under what circumstances a buyout, merger, or franchise is feasible for your company. How long will it take under current market conditions for your company to be in the best position for such an opportunity? What market conditions will be optimal for growth? If your business is a brick and mortar business, are you in the right geographical market for success?

Why is all this important? The answer is simple: investors know that their investment will be worth substantially more once your company is ready to be bought out, merged with another large competitor, or when it expands into the franchise market.

I strongly believe that determining an exit strategy at the beginning of your business, regardless of whether that plan might change during the life of the business (which it probably will), is critical to the structure of any business whether you are a multi-member LLC or a solo-preneur.

For those businesses that are leasing a space, your lease can have a significant impact on your exit strategy. For instance, leases will often have a section regarding the assignment of the lease or sublease. These are important considerations for your long-term business goals and should be considered very carefully. Restrictions on your ability to assign the lease affects the potential marketability of your business. Every business owner should have the goal of being able to “sell” or expand the business down the line. The landlord should not unreasonably withhold consent to an assignment and the language should be clear to that effect at the very least. In addition, any language that can be construed to restrict the right to take on additional investors should not be part of your lease as it affects your exit-strategy, and overall growth strategy.

Not sure where to start? Start with a CPA or an outsourced CFO (Chief Financial Officer). The latter are individuals who have access to the information necessary to assist you in creating your exit strategy.

SOME FINAL THOUGHTS (FOR NOW)

I hope this guide provides you with some foundational guidance for success. Trying to simplify numerous disciplines into one guide can be difficult and arguably self-defeating, as it is important for me that I keep the attention and passion of you the business owner very much alive. A 200 page book probably would not accomplish that task. Also, there is plenty of content for you to discovery on www.JeffDavisEsq.com .

My final piece of advice to you is simply, take small steps each day towards creating each section of your plan. Talk to experts who are willing to sit with you. Take notes and make note taking an active part of your daily routine. Stay humble towards learning new things. Don't be afraid of growth and finding something greater than you initially intended. And finally, always remember your passion. Without passion, your business is soulless. If you are ever lost, find your way back to the moment you felt passion, and the rest will surely fall into place.