

Direct Answers for Direct Marketing

Business Tools—6

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Legal, Regulatory, and Insurance Checklist for North Carolina

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Part 1. What The Agent Needs To Know

Once all the preliminary work of deciding if the planned business is going to work, your clients need to consider the legal aspects of it. If they are starting a new business rather than just adding a new enterprise, they need to consider all the legal, regulatory, and insurance aspects that might apply. If they are just adding an enterprise to an existing business, some of the legal issues will already be dealt with.

Regulations can have a significant impact on a business and need to be addressed up front. Small businesses, even home-based business, must comply with numerous local, state, and federal regulations. Avoiding or ignoring regulatory details may be easier, but it may come back to haunt your clients down the road.

The following areas provide some of the more common requirements impacting small businesses. This list tries to include all general applicable regulations; however, it cannot address all regulations since some are industry specific. *Ultimately, your clients are responsible for investigating and addressing the regulations that apply to their businesses. Failure to comply could result in legal consequences.*

To the best of our knowledge, these phone numbers, addresses, and websites are correct. However, please keep in mind that they may change.

Business Organization—Businesses can be one of many legal forms. The most common are Sole Proprietorship, General and Limited Partnerships, C-and S-Corporations, and Limited Liability Companies. Each legal structure provides different organizational options that provide differing levels of liability protection and varying tax and liability. Your clients should consult their attorney and/or accountant to help them decide the best form for their businesses. For information they can go to the Secretary of State website and scroll to the bottom of the page

Source: North Carolina Secretary of State <http://www.secretary.state.nc.us/corporations/>

Business Licenses—Generally, any person or entity involved in commerce will need a business license. However, the State of North Carolina does not provide a single business license that will ensure compliance with the numerous state licenses, permits, and regulatory requirements. Your clients must obtain the various licenses from the applicable agency and/or governing entity (city, county, or municipality) where their businesses are located.

Source: Business ServiCenter Phone: 919 715-2864 or Toll-free (in NC) at 1 800-228-8443 or Send fax to 919 715-2855 <http://www.nccommerce.com/servicenter/blio/redbook>.

Assumed Business Name (Fictitious Name)—If your clients do business under a name other than their personal or legal name or register as a business under a business name other than their legal or personal name or a registered corporate name, partnership, or trademark mark, they are required to notify the public. For example, if they are a sole proprietorship and use the name Toad Hollow for their farm, products, and advertising, they must identify themselves as “trading as Toad Hollow.” The purpose of this requirement is to protect the public by providing information in a public record of the identity of the business owner. Corporations doing business under their corporate name or those practicing any profession under a partnership name are exempt. Your clients can obtain forms to register an assumed name from the Business ServiCenter.

Source: Business ServiCenter Phone: 919 715-2864 or Toll-free (in NC) at 1 800-228-8443 Send fax to 919 715-2855 <http://www.nccommerce.com/servicenter/blio/startup/nameinfo.asp>

Taxes

Sales and Use Tax Number—Businesses that generate sales are required to obtain a Sales and Use Tax number (AS/RP1 form) because North Carolina charges a sales and usage tax. North Carolina state sales tax is 4.5%. Food is excluded from the state sales tax but subject to local taxes.

Source: North Carolina Department of Revenue Post Office Box 25000 Raleigh, North Carolina, 27640-0640 Telephone: 1-877-252-3052 <http://www.dornc.com/downloads/sales.html>

North Carolina State Tax Information—Operating a business in North Carolina requires paying North Carolina State taxes as well as Federal and local taxes. To find out more about the State taxes see

Source: North Carolina Department of Revenue Post Office Box 25000 Raleigh, North Carolina, 27640-0640 Telephone: 1-877-252-3052 <http://www.dor.state.nc.us/business/>

Federal Employer Identification Number—Businesses with employees are required to obtain a Federal Employer Identification number (SS-4 form) and a North Carolina withholding tax number.

Source: Internal Revenue Service

<http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>

Federal Self-Employment Tax—Everybody is required to pay Social Security Taxes, even if he/she is self-employed. The self-employment tax is a social security and Medicare tax primarily for individuals who work for themselves. It is similar to the social security and Medicare taxes withheld from the pay of most wage earners. For more information, including rates, contact Internal Revenue Service.

Source: Internal Revenue Service

<http://www.irs.gov/localcontacts/article/0,,id=98320,00.html>

Insurance

Insurance—Your clients need insurance for protection against fire, theft, and other losses. Their businesses may require specialized insurance, some of which is required by law. Having an insurance specialist thoroughly analyze the business to determine insurance needs is important. Remember, insurance may have limitations, waivers of coverage, and exemptions that your clients need to be aware of. Some of the most common business insurances are

Unemployment Insurance—Your clients are required by the state to pay unemployment insurance tax if their businesses have one or more employees for 20 weeks in a calendar year or if they paid gross wages of \$1,500 or more in a calendar year. Rates and where to send payments are found at

Source: Employment Security Commission of North Carolina <http://www.ncesc.com/>

Workers Compensation—Workers compensation insurance is required if a business employs three or more people. It provides protection to workers injured on the job.

Source: http://www.ncdoi.com/Consumer/consumer_home.asp

The following types of insurance may not be required, but are good business practices. A licensed, knowledgeable insurance agent should be consulted to obtain information about them—what they cover, what the limitations are, their availability, etc. As an Extension Agent, you are not responsible for providing specific information about insurance, you are only responsible for raising the issues with your clients.

Liability insurance protects the business from liability in the event someone or something is injured while on clients' farms or using their products.

Property insurance provides protection for the property including equipment and buildings. A rule of thumb says “if you cannot afford to replace it, insure it.”

Business continuation or income insurance covers fixed costs when the business is not operational because of some type of damage. It covers taxes, utilities, and other continuing expenses.

“**Key Man**” insurance is often required if the company is borrowing money. It provides income if a critical member of the business becomes ill or dies and provides capital during the transitional period.

Automobile insurance is obvious: a vehicle owned by the business should be insured for both liability and replacement purposes. What is less obvious is that your clients may need special insurance (called “non-owned automobile coverage”) if they use their personal vehicles for company business. This policy covers the businesses’ liability for any damage which may result from such use. They must also consider whether drivers under 25 will be using the vehicles.

Officer and Director insurance covers the officers and directors of the business. Your clients may want to consider this insurance to provide protection from any personal liability they may incur as a result of the actions taken on behalf of the business.

Home Office insurance covers your clients if their businesses are based in their homes. They want to make sure your homeowners’ policy will cover office equipment.

Labor Issues

Labor laws—Federal and state laws regarding employee protection apply to all businesses that employ people. These laws encompass a variety of topics including state labor laws, work force availability, prevailing wages, unemployment insurance, unionization, benefits packages, and employment services contact your state government.

Source: ***U.S. Department of Labor*** Frances Perkins Building 200 Constitution Ave., NW
Washington, DC 20210 Telephone: 1-866-4-USA-DOL
<http://www.dol.gov>

Source: North Carolina Department of Labor 4 West Edenton Street Raleigh, NC 27601-1092
Telephone: 919-733-0359 Fax: 919-733-0223
<http://www.nclabor.com>

Immigration Act—The Federal Immigration Reform and Control Act of 1986 requires all employers to verify the employment eligibility of new employees. The law obligates an employer to process Employment Eligibility Verification Form I-9. The Immigration and Naturalization Service (INS) Office of Business Liaison offers information bulletins and live assistance for this process through the Employer Hotline. In addition, INS forms and the Employer Handbook can be obtained by calling the Forms Hotline.

Source: U.S. Department of Labor
http://www.dol.gov/esa/regs/compliance/ofccp/ca_irca.htm

Occupational Safety and Health Administration (OSHA)—outlines specific health and safety standards employers must provide for the protection of employees. Minimizing workplace risks and associated costs is important.

Source: U.S. Department of Labor <http://www.osha.gov/>

North Carolina State offers an on-line course designed to help businesses owners identify and minimize workplace risks.

Source: <http://www.ies.ncsu.edu/safetyhealthmgmt/>
Source: North Carolina Department of Labor <http://www.nclabor.com/osha/osh.htm>

Inspections

Certificate of Occupancy (CO)—Using a building may require a Certificate of Occupancy (CO) from the city or county zoning department. According to the North Carolina State website, all new buildings and existing commercial properties that are renovated or expanded or require a building permit are required to have a CO inspection before someone can occupy the building. The building contractor is the responsible for notifying the fire inspector when the building is ready for the CO inspection. A CO checklist can be found at the Charlotte Fire Department's website

Source: Charlotte Fire Department
<http://www.charmeck.nc.us/Departments/Fire/Prevention/Certificate+of+Occupancy.htm>

Health Department Inspection—Businesses involving lodging or the sale of food and businesses such as hair salons will generally have health inspection requirements. To find out if your clients' operations must comply with health department regulations, they should contact the North Carolina Department of Health and Human Resources and their local county Health Department, which is often the enforcement body for state health regulations and inspections.

Source: North Carolina Department of Health and Human Resources <http://www.ncpublichealth.com/>

Fire Department Inspection—Businesses having regular entry and use of the facilities by the public as well as housing flammable materials will generally need a fire department inspection. Local fire departments should be consulted for more information.

Environmental permits—Businesses may require an environmental permit. Environmental permit information can be found under the Department of Environment and Natural Resources.

Source: North Carolina Department of Environment and Natural Resources
<http://www.enr.state.nc.us>

Zoning

Zoning—Your clients will need comply with local zoning regulations for business use in their geographic area. Zoning regulations may also apply to a business in their homes. Clients need to check with their local city or county agencies to determine if their businesses comply with current zoning ordinances.

Trademarks, Patents, and Copyrights

Trademarks can be a word, phrase, symbol, design, or a combination of these that identifies and distinguishes one product or business from another. Trademarks can be obtained at the state level and at the national level. National trademarks supersede state trademarks.

State registration of a Trademark—Department of the Secretary of State, Trademarks Section registers and renews trademarks and service marks in North Carolina under the provisions of Chapter 80 of the North Carolina General Statutes.

Source: North Carolina Department of the Secretary of State <http://www.secretary.state.nc.us/trademrk/ThePage.aspx>

Federal registration of a trademark provides nationwide protections for a \$325 registration fee (small entity). The trademark lasts indefinitely if renewed every 10 years. However, between the fifth and sixth year, an affidavit must be filed to keep the registration alive.

Source: U.S Patent and Trademark Office
<http://www.uspto.gov/main/trademarks.htm>

Federal Patent Registration—a number of different types of patents are available. So that your clients understand and file the patent correctly, they should seek professional help. Only attorneys and agents registered with the U.S. Patent Office may represent people in related matters and perform searches. Your clients can obtain many types of patents: Provisional Patent Application, Non-provisional (Utility)

Patent Application, Filing Guide Design Patent Application, Filing Guide Plant Patent Application, and International Application.

Source: U.S Patent and Trademark Office
<http://www.uspto.gov/web/patents/types.htm>

Copyrights—Protects your clients' original artistic or literary works. A copyright prevents illegal copying of written matter, works of art and music, and computer programs. To ensure copyright protection, your clients, as the copyright owners, should always include notices on all copies of the work.

Source: Library of Congress Copyright Office <http://www.copyright.gov/>

Uniform Code Council

If your clients' business will involve selling products through retail establishments, they will probably need to get a Universal Product Code (UPC) bar code. Most retailers require these UPC codes on products, and your clients should have it incorporated into their labels and/or packaging.

The UPC is obtained from The Uniform Code Council, Inc., which is not a government agency. The Council assigns a manufacturer's ID code for the purposes of bar coding.

Source: Uniform Code Council, Inc.
P.O. Box 1244, Dayton, Ohio 45401
(513) 435-3870.
<http://www.uc-council.org/>

Part 2. Worksheet/checklist

Ask your clients to complete the following checklist at home. It is targeted to new businesses, but much of it will apply to existing businesses adding new enterprises.

Business Structure

- Sole proprietorship
- S-Corporation
- Limited Partnership
- Other (specify) _____

Business name

- Assumed (fictitious, trading as, AKA, if not company or your name but totally made up)

Contact information: _____

- Real (your name or company name)

Business license

- Federal Employer Identification Number

Contact information: _____

Taxes

- Withholding
 - Social Security
 - Income (state and federal)
- Tax identification number
- Sales and use tax
- Local taxes
 - Real property
 - Personal property
- Business equipment, inventory, etc.
- Self-employment taxes (federal)

Contact information: _____

Insurance

- Unemployment
- Workers Compensation

Contact information: _____

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- Liability
 - Buildings
 - Equipment
 - Business interruption
 - Key man
 - Vehicle
 - Officers and directors
 - Home office
 - Other (specify) _____

Contact information: _____

Labor

- Workers permit for under 16 years old
- H2A and other immigrant workers
 - Housing
 - Required documentation
- OSHA notices
- Workers compensation notices

Contact information: _____

Health Department

- Inspections
- Licenses

Contact information: _____

Zoning

- Appropriately zoned for type of business
- Road access
- Signage

Contact information: _____

- Occupancy permit

Contact information: _____

Fire Department

- Inspections

Contact information: _____

Environmental permits

- Aquaculture

Contact information: _____

- Other (specify) _____

Contact information: _____

Other

- UPC required
 Building permits

Contact information: _____

- Building inspections for electrical and plumbing

Contact information: _____

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