

# **BRAVING THE WATERS: A GUIDE FOR TENNESSEE'S ASPIRING ENTREPRENEURS**

4TH EDITION\*

**TRANSACTIONS: THE TENNESSEE JOURNAL OF BUSINESS LAW\*\***

## **I. INTRODUCTION**

### **A Context**

According to 2004 U.S. census data, approximately 19.5 million people in the United States are self-employed. These entrepreneurs own businesses ranging from home childcare businesses to international consulting businesses. If you are interested in starting your own business or buying a franchise or existing business, this Article will help you get started and point you in the direction of more specific advice.

You should not rely on this Article as a substitute for proper legal, tax, or other specific advice for your particular business and special circumstances. This Article provides a broad overview of the various topics relevant to a new entrepreneur. It is always advisable to seek answers from professionals regarding specific questions that require the application of legal, financial, or similar specialized principles to a specific set of facts.

### **B. The Inspired, the Tired, and the Fired**

People become entrepreneurs for different reasons. Some entrepreneurs are consumed by a business idea that they simply must see become a reality. Others would rather work for themselves instead of a boss. Many entrepreneurs want to escape poverty, dependence, or the inflexibility of their current jobs through business ownership. Also, increasing numbers of Americans today are entrepreneurs

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not out of choice, but out of necessity.

Whether entrepreneurship is a matter of survival or self-fulfillment, success stories are full of valuable lessons that you can adapt for your own situation. The experiences of other entrepreneurs illustrate how the technical discussions that follow apply to real life business start-ups.

In 1996, the author of the first edition of this Article, Ann E. Sartwell, wrote about her entrepreneurial experiences. At the time, she was a law student at The University of Tennessee College of Law. Here she shares her story:

The inspirational episode that jump-started me was not as mysterious or as simple as it sounds. It was nearly Christmas, after all, and rather than study, I chose to think about decorating the house. Wouldn't it be nice, I thought, to have ornaments that were beautiful and meaningful to me at the same time, like all those handmade symbolic ornaments at church? Well, sure, but no one produces them commercially. Hmm, maybe someone, maybe I, should manufacture them. What a perfect way to blend my commitment to neighborhood economic development, religious beliefs and interests in art and calligraphy. A traditional law practice had never been my goal, after all, and running my own business would make use of many skills I developed in law school. In the end, a handcrafted business that embraces 'kind capitalism' is really a natural (if not immediately obvious) fit.

Over the next year, I explored the possibility of starting just such a business with teachers, friends, relatives and local merchants. Eventually I located an artist willing to help me design and produce the ornaments. For the last several months, we've developed and refined designs, test marketed prototypes and experimented with several production methods. After much trial and error, we are finally set up for large-scale production, and our company will attend wholesale trade shows this summer.

Ms. Sartwell employed many of the techniques discussed throughout this Article to reach the goal of owning her own business. She is not the only person who successfully reached this goal.

For example, Thomas worked as an editor for a large publishing company in Manhattan. After six years, instead of doing the writing and editing he was interested in, the bulk of his time was spent going to meetings, filling out paperwork, and

dealing with other people's agendas—especially his boss's own plans for career advancement. Thomas finally realized he could not continue at his present pace. He was unhappy, over-worked, and over-stressed. Although it is a good idea to set up a way to generate income before leaving your present position, Thomas took the all-or-nothing approach:

I had nothing set up before I decided to leave, but I knew that other people made good livings as freelance editors and writers, [and] that I certainly had the skills and potential clients after six years in the industry. Most importantly, freelancing would let me do what I love and am good at, instead of wasting my energy courting agents and chatting up authors. I called everyone I knew—editors, rights directors, and of course, my authors. I told them I was leaving and to please keep me in mind. Two jobs kept me going while I spent about \$15,000 of my savings to get started. Pretty soon the phone calls started coming in. It really took a full year before I knew that freelancing could be a career for me and not just some stopgap measure. I also had to find a way to deal with the isolation and the inevitable down periods. A part-time job at a bookstore was exactly what I needed to smooth out the gaps and bumps in my income so that I always know I can pay my rent. Just as importantly, it gets me out of the apartment on a regular basis, and replaces office camaraderie in what is otherwise a solitary business.

Thomas utilized his skills to start a new business that fit his personal and professional goals. He also recognized that he would need guaranteed funds each month to pay his established bills (also known as personal overhead), which were due even when he did not get paid for a freelance job. Thomas found a part-time job to complement his new business and to ease his financial peace of mind. Using all the contacts he made while working in the corporate world, and living frugally as he got his business off the ground, Thomas made 50% more than his previous salary during his first year.

While Ms. Sartwell and Thomas chose to start their own businesses, Emily Koltnow was forced to provide for herself when she was fired after twenty-three years in the fashion industry. Emily was fired during an economic downturn when work was not very easy to find. While searching unsuccessfully for work, she sought the support of other women in her industry. Soon she was leading twenty-six other out-of-work fashion executives in workshops on resume writing, cover letter writing, interviewing, and networking. She also took an eight-week course on starting her own business. After she and a friend were invited to address the annual regional meeting of The Fashion Group (a professional organization for executive women in

fashion-related fields), one of the women approached her and said, “Why don’t you bottle what you are doing?” Emily explains: “It was then that I decided to leave the apparel industry, become an entrepreneur and turn my networking group into a business.” She then founded WIN Workshops, Women in Networking. Later she wrote a book called *Congratulations! You’ve Been Fired!*. As a result of all her contacts in industry, Emily was frequently approached about whether she knew of, for example, a good designer for a new handbag company. After helping to place several people, it occurred to her that something was wrong: “I was helping people get jobs paying a lot more than I was making. The next time someone asked for help [finding new employees], I said, ‘I know two perfect people, but I charge a finder’s fee.’” That finder’s fee turned into a percentage, and in 1991 Emily launched her own company—an executive recruiting firm servicing the apparel industry.

## II. BUSINESS IDEAS, MARKET RESEARCH, TECHNOLOGY, AND ALTERNATIVES

### A. Business Ideas

All entrepreneurs start with a business idea. If you have already chosen your type of new business, congratulations! You have completed the first step towards owning your own business. If you have not determined what your business idea should be, but know that you want to be your own boss, you may need a little help narrowing your focus to businesses that may be right for you.

Consider Lee, an underpaid clerical worker, who wanted to be her own boss but had not yet come up with a business idea:

I took some classes sponsored by a local community college on starting your own business, and started talking to local business owners in our community about how they got started, what their greatest challenges were and what new products or services they perceived as a need or opportunity in our area. I read newspaper and magazine articles and started thinking about ways that I might make money while I went back to school to explore my long-term career plans. I spent a lot of time trying to think of ways in which I could make my personality and skills work for me.

Lee focused on her experience and background, and then realized that she needed more education to successfully choose a business idea.

Your experience and background should also play an important part when developing a business idea. You should choose a type of business with which you are familiar and with which you have some experience. For example, it is not a good

idea to open a restaurant if you have never worked in one. While you may appreciate fine food and good service, you do not possess the necessary knowledge or experience to produce either. Specific industry knowledge and experience prepare an entrepreneur for the challenges that lie ahead on the road to business ownership.

When searching for or evaluating business ideas, ask yourself some questions: What skills do I have that may be marketable or may help me run this business? What skills do I need to learn? You need to make a conscious effort to evaluate your skills and experience and determine what you need to learn—then start learning. This Article should help you get started with business basics and with ideas of where to go for more information. There are many sources to draw upon; you do not need to go it alone and travel down the risky path of pure trial and error.

It is also wise to explain your ideas to others. Your friends can be a valuable place to start. Also, be sure to take advantage of the Tennessee Small Business Development Centers (TSBDCs). Throughout Tennessee, TSBDCs offer a wide range of assistance to established small businesses and to entrepreneurs engaged in start-ups. The specialists in these TSBDCs can help you through each step of the start-up process. The TSBDCs do not have start-up funds, but they do provide start-up seminars that discuss the different types of business entities, organization, tax requirements, business licenses, and financing options. TSBDCs also offer workshops on developing your business plan and provide question and answer sessions with professionals, such as Certified Public Accountants and attorneys. The TSBDCs' resource centers have computers with access to databases and software training programs and Small Business Administration (SBA) publications, books, and manuals. Generally, you cannot check out materials, but you are welcome to use the center's resources any time it is open. See Appendix A for more information.

The Service Corps of Retired Executives (SCORE) also provides excellent mentoring, counseling, and training services. SCORE volunteers are experienced in many business areas and the organization strives to match prospective and established business owners with a SCORE member who has expertise in a comparable area. SCORE members also conduct counseling sessions via e-mail. Maps to local SCORE chapters and links to business resources are available on the SCORE web site at [www.score.org](http://www.score.org). See Appendix A for more specific contact information.

## **B. Market Research**

Like it or not, you must engage in market research to succeed as an entrepreneur. Conducting market research does not have to mean utilizing high-priced consultants or crunching numbers. Market research boils down to whether

there are enough potential customers for your product or service and whether those potential customers will buy from you in quantities large enough and at prices high enough for you to make a profit. If you have done more than merely think about an idea for a business, chances are you have engaged in market research already. If the idea is related to your current employment, you have learned and continue to learn about industry structure, distribution, and product placement on the job. If you have whipped up batches of gourmet doggie treats and made your family, friends, and pets eat them, you have tested a prototype. (Don't laugh; some doggie bakers are now millionaires.) If you have talked to several potential clients regarding their likes and dislikes, you have already done a focus group survey.

However, to enter a field where you have little experience, it may be necessary to rely upon formal marketing studies, study trade-specific journals, use a formal focus group, or compare competitors.

Once upon a time, getting your hands on databases that yielded useful information for start-up businesses was expensive, difficult, and time-consuming. Now, using market research is as simple as going to your local TSBDC or public library. You can also access the information online through your own computer. These databases contain the information necessary to locate suppliers, trade associations, and potential clients; attain information about industry fairs, trade shows, and seminars; and, perhaps most importantly, to assess your competition.

An entrepreneur cannot afford to be without the information that the competition utilizes. Nor can an entrepreneur ignore the national and international trends that shape the chosen industry. This does not mean that you should forego entering a crowded field or that, for example, you should sacrifice your plan to own a bookstore because of the existence of media superstores. However, you must know your competition, particularly if you have resolved to buck a trend. You must know who the competition is likely to be in the future, and know how you can do more for less than the others. Your customers are likely to focus on how you will add value to their endeavors.

The kind and amount of research you must do before sinking capital into an idea varies depending on the type of market you enter. Many entrepreneurs will tell you that real test marketing begins with opening a business, and, once started, never ends. They may also tell you that all the market research in the world will not do any good if you are unwilling to apply it to your goals. Applying that lesson may require substantial alteration of your original vision. While commitment to a quality service or product is important, ignoring the preferences of your customer base is an altogether different—and unprofitable—matter. Remember, as a provider of goods and services, you are focused on your customers' needs; these needs do not

necessarily coincide with your own assessment of what is needed.

One thing that must be done, regardless of resources, is to test your idea by talking to others. Many ideas for new businesses spring from personal frustration with the unavailability of a desired product or service. If other consumers share your frustration, or you perceive that a segment of the market is underserved, you just may have found the idea you need for your new business. Be aware, however, that as markets get more specialized, the vulnerability to changing consumer tastes increases. You may be concerned about someone stealing your fabulous idea; stealing does happen. However, you will never get the critical information you need by using the “cloak and dagger” method. Take comfort in the fact that those inclined to steal your idea probably will not; the hard work usually is in the execution, not the conception. Competitive copying starts after you have a proven idea *and* a viable business model.

### **C. Technology**

Utilizing available technology enables entrepreneurs to push a business to the forefront of the market. You should investigate the pros and cons of the technology available in your chosen field and then decide if it will benefit your business. The globalization of the economy and the rise of the information era are very much on the minds of business analysts and lenders these days. Your acknowledgment of the role that these issues play in your business—and your demonstration that you are prepared to adapt to the changing tides—will rest favorably with such people. Technology also can be a great (and often inexpensive) way to get your new small business off the ground.

### **D. Entrepreneurial Alternatives to Starting from Scratch**

If starting from scratch with a brand new business idea is not what you had in mind, franchising or purchasing an existing business may be an excellent alternative.

#### **1. Franchising**

Purchasing or leasing a franchise provides the entrepreneur with valuable operations assistance. Many franchises offer market research, standardized procedures, and products or services that already are in demand. The costs associated with franchises may be considerably smaller than those associated with a brand new business, although up-front costs may be substantial.

There are two basic kinds of franchises: business format franchises and product and trade name franchises. In a business format franchise, the entrepreneur buys the

right to purchase inventory and trademarked goods, as well as the right to take advantage of national advertising campaigns. Business format franchising includes a continuing relationship with the parent company. As the franchisee, you might buy inventory, sell trademarked goods, enjoy national or regional advertising, or receive bookkeeping help or training assistance from the franchisor. Most fast food giants are business format franchises. Business format franchisees agree to considerable operational integration with the franchisor—from standardized accounting procedures to required employee training. The diminished autonomy for the entrepreneur that comes with purchasing an established franchise is counterbalanced by a reduction in market risk, and there is usually room for entrepreneurs to express their commitment to their own brand of outstanding attention and service.

The other type of franchise, a product and trade name franchise, involves the purchase of the right to sell the franchisor's products or services in an exclusive territory. There is traditionally less operational control on the part of the franchisor with product and trade name franchises. Auto dealerships and pre-fab sunroom businesses are two examples of this kind of franchise. However, the distinction between the two types of franchises is becoming blurred as auto manufacturers and other product and trade name franchisors seek to exert greater control over operations in their contracts with franchisees.

A franchise can be expensive, and you may be expected to come up with a 25% to 35% equity stake in the operations. The qualification process can also be slow and frustrating.

A final word of caution is necessary: *Do not confuse a pyramid or multi-level marketing scheme with a legitimate franchise.* If the pitch involves the recruitment of other investors or salespeople and little to nothing about the product itself as the source of profits, beware. The Tennessee Department of Commerce and Insurance can assist you in determining a franchisor's legitimacy. The telephone number is (615) 741-2241. You should also contact the Federal Information on Franchises hotline at 1-800-688-9889 or 1-800-366-2998.

## **2. Purchase an Existing Business**

Purchasing an existing business may also be a good way to begin your entrepreneurial career. Existing businesses do not require start-up capital beyond the purchase price, which may be deferred through seller financing. Existing businesses have customers, employees, vendors, and products on the shelves.

If you are interested in purchasing an existing business, there are a few things you should know before you make an offer and execute an asset or equity purchase

agreement. First, you must research the particular business's worth. Although real estate, business equipment, and other tangible items may be worth a considerable amount on paper, a business is not valued simply by its tangible assets. It is important that you analyze the business's ability to make money with those assets, especially when those assets are operated in *your* hands. The business must be able to generate cash and make a profit for you or it is not worth your money—no matter what the value of its assets is on paper.

The best way to determine whether the business will be able to generate continuing profits is by analyzing its income statement for at least the past three years. Examining the statements will enable you to anticipate business cycle, income, expenses, and profitability. Also, consider whether the business relies on the personal attributes of its current owners. Make sure the expected cash flow will be available to *you*. These indicators are necessary to forecast whether the business will be able to withstand new debts and still create a profit.

If you purchase the business, do not assume its liabilities unless necessary. You should check your buyer's agreement carefully to make sure you are not assuming unknown liabilities by signing the agreement. If you do assume liabilities in the purchase, consider those possible liabilities when establishing a purchase price. It is a good idea to have an attorney look over the paperwork.

After purchasing the business, you should make sure that everything in the former owner's name is reissued in your name, as required under bulk transfer laws. You must also get your own business license, tax numbers, and insurance. See Section VI for more information about these items.

### **III. A BUSINESS PLAN AND YOUR BUSINESS**

#### **A. Business Plans**

A business plan is a document that describes the business and outlines your plans and prospects for success. Do not neglect this step in the process. If you cannot clearly explain how the enterprise is going to work, then you have not engaged in sufficient analysis to justify spending your hard-earned money. The business plan serves internal and external purposes, each of which are important. Determining your expectations and defining your goals will help you make important decisions about your new business—including whether the time, effort, and money invested will be worth the risk in the long run. Creating a business plan will help you do this. A business plan is also vital to procure capital should you seek investors or support from outside sources to finance your venture.

Writing a business plan forces you to solidify your ideas, which provides a check against giddy enthusiasm. Writing a business plan is not fun or easy, but the process raises issues that might have been overlooked and challenges you to come up with creative, preventative ways of dealing with those problems. You may end up keeping your old job while you start your new business on a part-time basis, postponing your plans, changing the type of business you start, or not starting a business at all. You risk losing your dream by thinking it through, but such a loss is better than losing your dream as well as your house and other assets.

Your start-up business plan can serve as a yardstick by which to measure your success over a period of time and as a starting point for further planning. Planning for the future is necessary. Business people frequently analogize a business plan to a road map or game plan, and the analogies work. Business plans serve as guides to reach goals and allow for obstacles and alternate routes. Operating without clearly defined goals and strategies does not prepare you or your business to anticipate or solve problems that come along. As the old adage says, “Those who fail to plan, plan to fail.”

Because no two businesses are alike, their structure and content are not set in stone. A start-up plan will rely on educated guesswork and projections much more than a plan for an established business. Most plans are outlined like the example found in Appendix B. You will have many of the answers you need to prepare your own business plan if you refer to the Appendix B example while working through the corresponding sections below, which describe each section of a business plan. Appendix B is annotated with footnotes to explain the purpose of each section of the plan. These footnotes are *not* part of the business plan. The footnotes are comments for purposes of this Article’s discussion.

## **B. Your Business**

### **1. What Kind of Business is Right for You?**

Whatever the sources of your decision to have your own business, the same amount of work is required in order to succeed. If your journey begins with “the idea,” you will need to subject both the idea and yourself to careful scrutiny. Can you clearly articulate what you want to do? Does the idea’s power over you begin to fade after the initial infatuation? If your conviction remains strong after the passage of weeks and months, then you need to ask yourself whether you are ready to commit yourself to that idea for the next five years and beyond. If the answer is no, you might still be able to turn that idea into a profit-making venture for yourself. For example, you might have a great idea for a new home craft product, but you are not interested in mass producing it or selling it at regional craft shows. You might,

instead, market the plan and instructions for the craft to a national craft publishing company or magazine.

If, on the other hand, you believe you are committed to starting your own business, you need to ask yourself the following questions:

- How does being an entrepreneur serve my personal goals?
- How much time do I have to devote to my new business to make it successful?
- Do I have the support of my family?
- In what ways can I make my previous work experience work for me?
- What sorts of things am I familiar with?
- Where are the holes in my knowledge, either in general business or in my area of interest, and how can I fill the gaps?
- Am I doing this to get rich quick? (If the answer is yes, you're probably not going to achieve your goal. While the magazines are full of stories about overnight millionaires, they are the exceptions.)
- Do I have a solution for a pesky problem, or an idea for an untapped niche market?
- What do others recognize as my talents?

If you have not picked a particular idea for a business, the following discussion of business types and concepts might help narrow the field. There are several broad categories of businesses, including retail, service, and manufacturing. This list is not exhaustive, and one business may combine elements of several types.

#### **a. Retail**

Retail businesses generate money by selling products to customers. Profits are generated through markups or margins. The most familiar form of retail operation is a store in a fixed location. Other retail operations bring products to the customer on a route or, increasingly, through catalog sales or electronic ordering. Mail order companies depend upon the strength of their web site or catalog and on identifying and reaching the right customer base. For a traditional store, one of the most important factors is location. Finding a location that is both appealing to your customers and affordable is quite a challenge, but for a retail business this spells the success or demise of an operation.

A fabulous, well-targeted catalog, web site, or a great location alone will not guarantee success. Other crucial factors relate to the skills of the entrepreneur. They include managing inventory costs and turnover (production costs in food service), marketing, customer service, hiring the right people and managing them well,

projecting sales and seasonal fluctuations, and planning and managing cash flow.

Entrepreneurs considering a retail enterprise must be prepared for spending much of their lives at their business, particularly during its inception. If you and your family run the store or supervise the warehouse, vacation time can be scarce to nonexistent. And if hours of operation are long, family members may only see each other as they swap places at the cash register. Labor costs may be the one variable in a small retail operation that you have the power to influence. Cost control, however, is not the only reason that small retailers spend a significant amount of time at their stores. Retailers also gain their customers' trust and loyalty and receive valuable marketing information.

### **b. Service**

In a service business, the owner sells his or her expertise and skill. The service provider makes use of knowledge and/or equipment that consumers do not have or cannot use on their own. Maid services are an example. Some service businesses, like medical practices or accounting firms, do business by having customers come to them. Still other service businesses, like landscaping, construction, and carpet-cleaning businesses, bring their services to the consumers. In addition to most of the skills outlined above for retailers, service providers must adequately supervise employees and enforce work standards, as well as make bids on projects that will be both competitive and profitable.

Not all service businesses will rely entirely upon the owner's particular skill or expertise for its total value. However, in the early days, a service business of any kind will be linked intimately to its owner's identity. The demands on an entrepreneur's time are likely to be as large as those of a retailer, but may be more fluid because of shorter operating hours or seasonality.

### **c. Manufacturing**

Manufacturers produce and sell products to retailers or wholesalers, either as finished goods or component parts; they generate profits by selling products for more than their fixed and variable costs. It is very important to consider all costs, including general administrative support and overhead, and not just those direct costs necessary to produce the product. Manufacturers need the customer service and marketing skills of the retailer and the ability to project costs of the service provider, but they must also engineer and design the product, manage its production, control quality, evaluate its commercial lifespan, and become adept at labor relations. The manufacturing business may require more start-up capital than a service or retail business; it generally requires more start-up fixed costs for plants and equipment and

takes longer to generate profits.

## **2. Business Name**

After determining the right type of business, you must name it. The business's name says everything about the business and can be as practical or as catchy as you determine it needs to be. After you have decided on a potential name, you should check with the Secretary of State by telephone at (615) 741-2819 or by web site, at [www.state.tn.us/sos](http://www.state.tn.us/sos), to run a business name availability search. From the web page, after clicking on the business services link, you can type in the proposed business name to see whether it is already being used. The web page also provides information concerning business name availability guidelines.

If you determine that the perfect name is available, but are not yet ready to file the appropriate documents to create the business entity, if any (more about choosing and creating your entity in Section V), you, as a representative of the prospective business, may file an application to reserve the chosen business name with the Secretary of State. A representative of a corporation, a limited liability company, or a limited partnership may file an application for name reservation.

## **3. The Overall Purpose of the Company: The Mission Statement**

The company description sets out the underlying approach of your company and the strengths that distinguish it from the competition. You might consider breaking the overall strategy and mission statement into three sections—past, present, and future. In discussing your business's origins, you can explain the overall purpose of the company, when it was founded, and your original strategy for breaking into the market. In discussing the present, you can outline how you have adapted your initial plans in the face of test marketing, research or other changes, and explain your current needs and strengths. You can be honest about your current challenges and difficulties without being negative. Your discussion of the future should outline the means by which you seek to reach your objectives, which should be cast in plain, active language. Although you will be relying on projections, you should state very clearly where you expect to be in a finite period of time. As much as possible, your projections should be supported by research.

## **4. Offices and Locations**

### **a. Home-based**

Home-based businesses represent an increasingly important segment of new businesses. The majority of self-employed people own home-based businesses. The

rise of home-based businesses can be attributed to technology that allows information sharing without the need for a traditional office, and to the entry of large numbers of women into the entrepreneurial field on at least a part-time basis.

Most home-based businesses are so intimately dependent upon the skills of the entrepreneur that they cannot be successfully separated from the owner. Child caregivers, artists, writers, craftsmen, photographers, and consultants in specialized fields are examples of home-based businesses. Their profitability depends on the degree to which the entrepreneur can identify and access small, niche markets. Also, the entrepreneur must price the product or service so that it generates revenue in excess of fixed and variable costs and provides adequate compensation for the time expended.

Initially, anyone considering a home-based business should check local licensing, zoning, and land use restrictions because some communities have outlawed home-based businesses altogether. Common restrictions affect sign placement and customer volume. Home-based businesses can provide additional tax benefits to entrepreneurs; check current tax regulations to see if the expenditures you plan for your home office will be deductible.

Because of the flexibility they offer, home-based businesses have special appeal for entrepreneurs who place a high priority on time spent with family. Benefits of home-based businesses include: freedom, flexible work hours, being your own boss, creating your income, and escaping the corporate lifestyle. However, there are real challenges in maintaining a professional image and work routine, as well as organization in the home. Today, home-based businesses face less discrimination in the marketplace, and the advent of voice mail, pagers, and mobile phones has made professional services much less expensive and more accessible than in the past.

#### **b. Internet**

The Internet can be the exclusive location for your business, an excellent tool to assist a conventional business, or even a great way to make your business accessible to a broader customer base. If you choose to develop a business web site, it is important to limit exposure to web-related liability for yourself and/or your business (depending on your chosen form of business entity). Your web site will need, at minimum, a Terms of Use/Conditions Agreement and a Privacy Policy. You will need both of these items, as each serves a separate and distinct purpose.

A Terms of Use/Conditions Agreement sets the rules for use of your web site by others and is typically presented to web site visitors as a hyperlink. Your hyperlink to the Terms of Use/Conditions Agreement must be conspicuous so that

the visitor will notice and read this document. If your hyperlink is not conspicuous then a visitor can claim he or she did not know it was there and therefore that he or she should not be subject to its conditions.

The Terms of Use/Conditions Agreement itself should spell out the terms that a visitor to your web site agrees to abide by. It should clearly explain a visitor's rights and obligations, as well as the rights your business reserves regarding the web site and its use, including reservation of all intellectual property rights. A typical Terms of Use/Conditions Agreement provides for arbitration (binding dispute resolution), waiver of jury trial, choice of law (designates governing jurisdictional law), and choice of jurisdiction (designates proper state or country to exercise jurisdiction) in the event a dispute stemming from use of the site results. It would also be a good idea to include a limitation of liability statement in your Terms of Use/Conditions Agreement and use language that an average visitor to your web site can understand.

Most importantly, your Terms of Use/Conditions Agreement must be structured so that the visitor agrees to its terms before completing a web site transaction, rather than simply having the option to peruse the agreement without assenting to its contents. You should seriously consider paying an attorney to draft these provisions.

You will also need a Privacy Policy to explain to your web site visitors exactly what your business does with the personal information that they provide during transactions or web site registration. Your business should create and abide by a Privacy Policy even if it does not solicit visitor information—for example, if your business receives visitor questions and comments via e-mail. A Privacy Policy should take into consideration the business and legal effects of that policy.

If your business utilizes employees that have access to your web site and/or e-mail, you should prepare an official, written policy and require employees to sign that policy before they receive access to the system. This policy is intended to limit potential liability that stems from your employees' use of your network. The policy should include rules concerning the types of e-mail that may be sent from business computer systems or e-mail addresses and the types of web sites that employees may visit. If you choose to monitor your employees' Internet and e-mail usage, this policy and the range of your oversight must be clearly stated in the employee-signed company policy. All of the above documents are best drafted with legal guidance.

### **c. Based outside home**

Many businesses must be based in a location other than the entrepreneur's home. Some businesses may need to be located outside the home due to zoning

restrictions, while others may need more space for equipment and products than an entrepreneur's home provides. Still others simply may be located outside the home because the entrepreneur feels he or she can reach a broader customer base from a different location.

If you choose to locate your business outside your home, you will most likely need to lease business space. Your lease agreement should be negotiated to include all the terms you desire and then reduced to writing. This written agreement will generally supersede all other agreements between you and your landlord. It cannot be modified unless the modification is in writing and is signed by the party that the modification detrimentally affects. Therefore, you should be certain that all terms that have been agreed upon are included in the final written agreement. It may be helpful to consult an attorney to make sure that your desires and concerns are properly addressed in the document before you sign it. Be wary of signing a preprinted "standard" lease. Anything that you and your landlord agreed upon verbally will be superseded by the provisions in this one-size-fits-all lease. Make sure your commercial lease agreement reflects your understanding of the lease arrangements and suits your businesses needs.

### **C. The Market**

This section of the business plan identifies what benefits your business has to offer and demonstrates whether there are enough customers out there who will buy from you in order to support your business. Essentially, you must convince your audience (banks, investors, and other sources of financing and support) that your company, by virtue of some benefit it confers on its customers, has an edge on the competition. Identifying the particular appeal of your product or service is the relatively easy part. The ability to demonstrate the existence of a base of customers may come from newspaper articles, economic or census data, market studies, test sales, and the like. This is one statistical area for which you can actually provide real numbers, unlike much of your financial projections later in the plan. If you do not have those numbers, seek them out at the library or Small Business Development Center. See Appendix A.

Answering the following questions will assist you in completing the marketing section of your business plan.

- What do you sell? (products or services)
- How does what you sell fit the market need?

Whatever your product or service, you will need to be able to describe it in terms that appeal to the marketplace and those reading your business plan, rather

than in terms that merely appeal to you. If it is a technical product geared for mass consumption, you will want to focus on its uses and not its fabulous inner workings. If your customers are lower to middle class consumers, you will want to avoid terms that will make it look as if your service or product is too expensive. You must be able to identify the kinds of customers that will be interested in the product or service, your target market, the projected number of customers in the area, and those customers' willingness and ability to purchase the product or service.

### **1. How Will You Break Into The Market (If You Are Not Buying an Existing Business)?**

This section details your marketing approach. Your marketing approach should explain how you will create a demand for the products or services your business sells. Now that you have identified your customers, describe how you are going to reach them in a cost-effective manner. You should consider any possible venue for advertising, as well as the use of in-house sales forces, telemarketers, direct mail, and exhibitions at trade shows. Your plan should outline the costs of any such strategies. If you are making a product, you will need to discuss your sources of supply, the capacities of any subcontractors, equipment, and quality control. As with sales and promotion, you need to include cost information. You should also be able to define your target market, whether it is local, regional, national, or international in nature.

### **2. Who Are the Industry Participants?**

To answer this question, you must learn all you can about your competition in the industry. Every business has competition. If the target market has a need, it is being fulfilled in some manner, perhaps by a substitute or another type of business. When researching your competitors, you should find out who they are and where they are located. You should also determine how long they have been established and how big they are. Knowing how many competitors you have and exactly what they do can will help you develop your own successful marketing strategy. Studying this information will also make unfilled market niches more apparent to you—some of which you may want to target your business to fill. Your business plan should also discuss the state of the industry, explaining whether it is new, growing, maturing, declining, etc.

### **3. What Distinguishes You From Your Competition?**

After you have determined what competition is out there, you should determine what strengths and weaknesses your business has in comparison. When answering this question, you should be able to list the business advantages you have over each of your competitors.

## **D. Managing Your Business**

### **1. Your Management Team**

For a start-up business with little or no history, selling your management team is critical. In the absence of a company track record, the skills and attributes of the entrepreneur may be the only known factor. Your resume (and that of any other person playing a management or key role in the business) should include all educational and employment information and can be introduced by a short personal statement. You must be honest and complete in the information you provide, but write your personal materials with attention to demonstrating success in applicable fields, leadership ability, or a proven track record with other start-up operations. You may not have started a business before, but you may have worked in close association with another successful entrepreneur, or even founded a volunteer organization.

### **2. Other Owners or Investors**

If there are other owners or investors, identify them, the amount of their investments, and the percentage of each one's ownership control. For a corporation, list the names of directors and officers. Also, include information on any employment contracts you have already executed and break down labor costs by person and position. You should include a separate stock option description if you have one planned or in place.

## **E. The Present and the Future**

Your business plan should also include information about the present state of your business and its future goals. You should list the current needs of the business, cast in positive terms. Identifying your needs helps you focus on meeting those needs and lets lenders and investors know that you have thought through your business operation. You should also explain where your business expects to be in five years and ten years, using projections gleaned during market research.

You may still be doubtful about the benefits of a business plan for your own purposes, but a business plan is also a tool for use in obtaining financing, investors, and even contracts with other businesses. After the real estate fiascoes of the late 1980s, banks and other lending institutions became much more cautious about business lending. It is not enough to fill out a loan form and expect to ride on your personal and credit references. You will also be expected to present as comprehensive a business plan as is possible. If you are approaching investors, even those close to home, it is only reasonable for them to expect to see your plans in

writing. How else are they to evaluate the merits of your proposal? And, should you be lucky enough to have the possibility of a sale to a large corporation, you will need a business plan to instill confidence in your ability to deliver as promised and to convince them that you have given thought to the next several years.

#### IV. FUNDING

##### **A. Financial Plans – Determining Your Specific Business Needs**

How much money do I need? More than you think. Generally, the government does not provide free money to start-up businesses. Also, remember that lenders do not provide 100% financing for business start-ups. Banks will be interested in the origins of initial start-up money; in other words, you will not be able to borrow on borrowed equity. It is essential that you demonstrate to your sources of financing that you (and perhaps your family) have put your own resources at risk.

##### **B. Explanation and Practice Forms**

Three basic financial statements should be included in this section: cash flow, income statement, and balance sheet. You should also understand the role of a Statement of Owner's Equity. These financial statements should provide, as completely as possible, a picture of your business's present and predicted financial condition. They should discuss your expected date for reaching the break-even point and profitability. Your financial statements should make clear what the biggest expenses are likely to be over the next five years. If you are making a loan application or seeking investment, state exactly how much you seek and in what form you want it.

In preparing these statements, rules of financial accounting should be used because these statements are being prepared for outside sources. Be aware that different rules and guidelines apply to financial accounting than tax accounting. Five basic rules will help you prepare or interpret financial statements:

- **Be comparable and consistent:** Once you choose a method, use only that method so that comparisons in subsequent years will be possible. If you change methods, you must tell the user in the financial statement footnotes.
- **Materiality:** When a financial statement is presented, the statement must not be incorrect by a material amount.
- **Conservatism:** Do not overstate assets or income.
- **Full Disclosure:** Your financial statements represent that you are disclosing everything that has happened to the business, in this company, etc. from the

starting date of the statements through the ending date. Failure to disclose or the misstatement of material facts can have very serious civil and criminal repercussions.

- Cost v. Benefit: Do not do anything that costs more than it benefits the company.

A comprehensive discussion of these kinds of statements is impossible in an Article like this. Hopefully, the following overview will help you learn the basics of how to use them to function as an entrepreneur.

### **1. Cash Flow**

There is no magical formula that will accurately gauge your real start-up needs, but engaging in several month's to a year's worth of cash flow projections can help you arrive at a reasonable estimate. Cash flow is a term that refers to the measuring of the difference between the movement of money in and out of your business over a period of time. Cash flow does not equal sales or profits. Crudely put, cash flow determines your ability to pay the light bill at the end of each month. It will be an experience. The short introduction that follows should help you start thinking in cash flow terms, but you will need to do more homework before you start making big commitments.

During each month for which you can make projections, you will begin with "starting cash" (or starting balance). That is the money you will have on hand. For the months that follow, you will use the same number as the previous month's ending balance. "Cash in" includes all sources of cash received this month, including cash sales and paid receivables. Paid receivables are made up of previously invoiced sales for which you actually get paid. When you project paid receivables, you will need to estimate with as much accuracy as possible the lag time between the sale and its collection. "Cash in" also includes interest payments (probably not an issue for the struggling entrepreneur), which would also be included, as well as "other" sources of cash, such as bank loans, stock sales, or the sale of a company asset (like equipment). A total of the sources equals the "cash in" total.

Next, you will need to estimate "cash out." Money leaves your business in essentially two ways, either as fixed or variable expenses. Fixed expenses arise regularly and are not very flexible. They include rent, payroll, payroll taxes, utilities, loan interest and principal repayment, and insurance payments. Variable expenses change from month to month, and frequently vary with seasonal changes, sales volume, or production. Supplies, advertising expenses, legal expenses, consulting, and commissions are some examples of variable expenses. Add fixed and variable expenses together to calculate the "cash out."

Adding “starting cash” and “cash in” together, then subtracting “cash out” from that total equals “ending balance.” The cash you have at the end of the month is the cash you have on hand for next month’s projection. It becomes your “starting cash” entry for the next statement. Great you say, but I thought this was a “cash flow” projection. And so it is. To get your “cash flow,” which simply measures the amount of net cash that flowed into your business that month, subtract “cash out” from “cash in.”

By creating a cash flow projection, you will be able to determine the amount of capital necessary to get started. For your initial projections, use a zero balance for “starting cash,” and continue month-to-month projections until your ending balance is positive. Then, you look back over the monthly statements and find the largest negative balance. The largest negative balance tells how much money is needed to cover your expenses until the break-even point. This amount is what you must have to get started (provided, of course, that you do not have any unforeseen expenses and that your sales go as planned). If the largest negative balance is plugged in as “starting cash,” your cash flow numbers will remain the same. This is so because cash flow simply measures what goes out and comes in during any given month. What will change in those statements is that you will not have negative balances at the end of any given month. Therefore, you can pay your bills and payroll.

Your projections about your start-up needs are only as good as your estimates. Your start-up need estimates should include initial start-up expenses (money spent before you open for business) and working capital (what keeps the door open). Most entrepreneurs make the mistake of underestimating their needs, in part, because it is scary to throw numbers about. You might consider drawing up three cash flow projections: best case, worst case, and somewhere in between. Then, at least you will have a better sense of the possible scenarios. It will probably take longer than you expect to start generating good sales numbers. It takes time for word to get out that you are in business and longer for people to start taking you seriously. Also, keep in mind that you will be operating at the low end of the learning curve for a while. At first you will make mistakes and some tasks will initially feel very foreign. Rest assured that these same tasks will eventually become second nature to you.

Engaging in cash flow exercises can also encourage you to come up with creative ways to keep costs in control or suggest alternate paths for entering your business. If the prospect of meeting monthly lease payments for your retail business seems unworkable, you could consider operating out of your home, leasing a space in an antique or craft mall, selling at shows or special events, or purchasing a seasonal kiosk at a traditional mall.

## **2. Balance Sheets**

A balance sheet is a picture of a business's financial position at a specific point in time, much like a snapshot. It consists of three major categories: assets, liabilities, and owner's equity. The basic balance sheet formula is  $\text{Assets} = \text{Liabilities} + \text{Owner's Equity}$ .

Assets are things of value that you own and can measure in dollar amounts. Assets include cash, inventory, equipment, land, prepaid insurance, prepaid rent, buildings, and accounts receivable. Accounts receivable represent money your business has earned but has not yet received. Each of these is a separate line item in the assets section of the balance sheet.

Liabilities are the amounts you owe someone else. For example, your accounts payable represent money you actually owe to creditors and suppliers. Owner's equity is capital the owner has invested in the business; it is discussed below.

A statement of owner's equity (O/E) is a separate statement that must be prepared prior to preparing the balance sheet. A statement of owner's equity is an analysis of capital invested in the business. Basically it shows what the business has accumulated minus what it has used. To prepare an O/E: (a) start with beginning capital, (b) add net income (revenue – expenses = net income), (c) add investment (Ex: interest earned), (d) subtract any dollar amount the owner withdrew for personal use. The final number will be used as O/E on the balance sheet. For your start-up business, this number may simply be the beginning capital amount if no net income, investments, or withdrawals exist. Remember that an owner's investment in the business is considered capital in the equation, not an investment. See Appendix C for a balance sheet example.

## **3. Income Statements**

If balance sheets are like snapshots for a particular point in time, income statements are like videos of the entire year. Income statements report net sales minus costs and expenses.

Income statements are made up of two accounts: revenue and expenses. Determining revenue depends upon which accounting method your business uses, accrual or cash. Most businesses use the accrual method. Using the accrual method, revenue is not what your business has received in cash, but what it has earned. Small businesses, churches, and some nonprofit organizations use the cash method, which recognizes revenue as it is paid—not when it is earned.

Expenses are the amounts your business incurs to generate the revenue. Expenses include: rent, utilities, salaries, advertising, tax expenses and depreciation, among others. For an example of an income statement, see Appendix C.

### **C. Where Do I Get It? (Securing Capital)**

Think close to home, like your own money, your spouse's money, your parents' money, and so on. Contrary to popular belief, banks and venture capitalists are not the most common sources of capital for start-up businesses. Institutional sources of money regard start-up firms with wariness. After all, your business is an unproven commodity. Even if they are willing to extend credit or make an equity investment in your business, they will want to see evidence of your (or your family members') confidence—that is, your own investment in the business. In addition, a business loan and/or the participation of a venture capitalist carries a heavy price, either in the form of high interest rates or a significant ownership interest. Your small size makes you less attractive to banks and venture capitalists as well because there are significant transaction costs associated with striking a deal. Your financing needs simply may not be large enough to interest a traditional banker or venture capitalist. Venture capitalists are looking for proven management skills and big returns (i.e., millions of dollars) on their investments over short periods of time.

If you are approaching a bank for a loan, be forewarned that it is likely to be granted on your personal credit history or on the strength of a relative's or friend's credit, not on the strength of your business. Expect the bank to extract a personal guarantee of repayment and possibly require another person to guarantee repayment as well.

The United States Small Business Administration (SBA) administers loan guarantee programs throughout the United States, but the availability of these funds to the beginning entrepreneur is extremely limited. To find out more about SBA programs, contact the agency's Small Business Answer Desk at 1-800-U-ASK-SBA (1-800-827-5722) or visit their web site at [www.sba.gov](http://www.sba.gov).

The SBA guarantees loans to finance small businesses for the long term and loans for short-term cyclical working capital needs. SBA guaranteed loans are granted for up to 25 years for fixed assets and 10 years for working capital. Loans are granted based on the borrower's ability to repay the loan, the loan's purpose, and the useful life of the assets financed. Financial institutions/lenders usually request the guarantee from the SBA.

The SBA and lenders favor entrepreneurs with management expertise and sufficient funds and cash flow to operate the business and pay back the loan.

Adequate equity or investment in the business and sufficient collateral, as well as the commitment to success, are also important. The SBA and lenders approve loans based upon how well the entrepreneur presents herself, the business, and its financial needs. Make sure you prepare the essential well-written and well-thought out business plan to support your loan application, regardless of whether it will be SBA guaranteed.

The most common sources of funding for entrepreneurial start-up costs are those closest to home: personal resources and those of family and friends. From one perspective it would be nice to use “other people’s money,” but relying on your own resources has its value. If your idea seems too risky to stake your personal resources on, then it probably needs to be reworked or even abandoned. That does not mean that it makes sense to stake all the resources you have on your idea, because even the most carefully planned and executed business ventures sometimes fall prey to circumstances beyond the control of the entrepreneur.

As you seek start-up money, consider the following personal sources and the advantages they offer. Personal savings, including retirement funds and profit-sharing plans, are frequent sources of start-up capital. There are tax penalties associated with using sheltered money, as well as the sacrifice in security you make by using existing savings, but you may be more willing to risk losing them if you are not near retirement. Keep in mind that if the business fails, you may find yourself in search of employment without the benefit of a savings cushion.

You may also choose to finance your start-up costs with personal borrowing. Whole life insurance policies can be borrowed against, and the interest rates are not horribly onerous. If you default on the loan principal, it would be deducted from the benefit paid to your survivors upon your death. Believe it or not, many entrepreneurs use credit cards as a source of start-up capital. However, the interest rates are usually very steep, and should you default, your credit rating will be shot, making it doubly hard to get additional financing.

Personal assets are funds that are already in your possession. For start-up businesses, lenders usually expect you to provide 20% to 30% of your own financing. You will have to use your personal assets to provide that money.

## **1. Yourself**

### **a. Savings**

If you have enough money saved to fund your new business, you are in much better shape than most would-be entrepreneurs. If you do not have that much

money then the rest of this section should help you explore other options available to you.

### **b. Borrowing**

A personal loan, rather than a business loan, is a source of borrowed funds. This kind of borrowing is only available to entrepreneurs with significant collateral (stock, life insurance, real estate, or savings accounts), and you may be forced to repay part of the principal early if the value of the pledged asset declines or if the bank has good reason to doubt your continued ability to pay. However, personal loans do make it possible to use the muscle of your assets without liquidating them. This advantage may be important when the liquidation of a particular asset, like stocks, results in heavy tax burdens to the entrepreneur.

If you are considering borrowing money, it will be important to know the difference between the terms “secured debt” and “unsecured debt.” Secured debt refers to pledging specific collateral in exchange for the loan. The collateral will be lost if you do not fulfill your obligation to pay the loan back. Unsecured debt simply means that your obligation to repay is not secured by any collateral. Credit cards are a good example of unsecured debt. If you are considering using credit cards to finance your new business, keep in mind that credit cards carry a higher interest rate than conventional loans and may end up costing you a lot more money in the long run.

#### i. Home equity loan

Second mortgages on your home are another frequently used possibility, and the interest rates will usually be lower than those on a credit card. All or part of the interest paid may be tax deductible as well. Many homeowners have significant equity in their property, so the amount you can borrow potentially is large. Home equity is the difference in your home's market value (what it is worth) and the principal (what you still owe on your mortgage). *However, and this is a big however, defaulting on your mortgage in the event that the business goes bust can result in foreclosure and the forced sale of your home to satisfy the outstanding debt.* Second mortgages are heavily advertised and aggressively marketed, and the application process may be shorter and easier than other loan arrangements, but do not make the mistake of thinking that banks and other financial institutions do this for charity. Rates on second mortgages are generally higher than first mortgages because of the greater risk for lenders. Also, remember that your home is at risk if for some reason you are unable to repay the loan. For more information about home equity loans see [www.bankrate.com/brm/rate/loan\\_home.asp](http://www.bankrate.com/brm/rate/loan_home.asp).

## ii. Retirement plan

If you plan to continue working for your current employer while getting your new business off the ground, borrowing against your retirement plan is also an option. The person in charge of benefits at your place of employment can help you arrange a loan. Like life insurance borrowing, borrowing from your retirement plan is borrowing from and repaying yourself. The terms for borrowing from your retirement plan include low interest rates and a repayment period of up to five years. The downside of a retirement plan loan is that while you are using the funds for your business, they will not be growing in your retirement plan, which will decrease its growth rate.

Remember that you cannot borrow from a traditional IRA. Borrowing from your traditional IRA is considered a distribution and you will be responsible for paying taxes on the amount that you “borrow.”

## iii. Life insurance

There are two ways that your life insurance could help to fund your new business. First, you could use the “surrender” or “cash value” of your whole life insurance policy. However, to use the surrender or cash value you would have to cancel your policy and then the insurance company would pay you the equity that you have built up through payment of your premiums over the years. Although you would then have the necessary money to start your new business, you would also be without life insurance, which could be a very bad thing. A second, more prudent, option is to borrow against your life insurance equity. The money is yours so qualifying for a loan would be unnecessary. Further, these loans offer low interest rates and very flexible repayment plans.

## iv. Stocks and bonds

Another way to borrow against your own money is by “going on margin” or “margin agreement.” Rather than selling your stocks or bonds and incurring taxes, and possible losses, you can use your stocks and bonds as collateral for a loan from your brokerage firm. As with home equity loans, you will not be able to get the full amount of their current value because of the risk, but they offer low rates and flexible repayment plans. You should know that if the stocks fall in value, you could experience a “margin call” and be forced to pay off all or part of the loan and see your stocks sold to cover the debt.

Obviously, none of these options is without risk or cost, and you may not have access to them all. You must remember, no matter what kind of borrowing you

might choose, your cash flow projections have to take interest payments into account. Moreover, the degree to which your business is leveraged can seriously affect your ability to respond to changes in the future. Those interest and principal payments are serious obligations, tied not only to your business, but also to your personal creditworthiness and security. Do not undertake them without due consideration to the consequences that can follow.

## **2. Others**

### **a. Family and friends**

In addition to using the credit strength of a family or friend to secure a loan from a bank, many entrepreneurs rely on direct funding from relatives and friends. There are real dangers associated with borrowing money from and/or granting ownership interests to family and friends, but this approach does make it possible to overcome some of the risk aversion obstacles that you might face in getting a loan from more traditional sources. Only you and your family or friends can decide if you are willing to accept the baggage that comes with the mix of love and money, but there are ways to minimize the risk of fallout should the business or the relationship sour.

The most common problem with this kind of funding is the tendency for both parties to avoid defining the nature of the transaction out of a misguided sense of delicateness. It is irresponsible from both a personal and business standpoint not to spell out the nature of your obligations ahead of time. The terms of your agreement should be put in writing by signing a promissory note. The promissory note is a legally binding document that sets out the terms of the loan including the loan balance, the interest rate, the repayment schedule, and the rate of repayment. Forms for promissory notes are available in stationary stores and some personal finance computer programs also have them. The form should only be used as a template; you should add the specific terms for your agreement by filling in the blanks and otherwise modifying the document to reflect the terms of your deal.

To illustrate some of the difficulties that can arise in undocumented family funding situations, consider the following:

Suppose Mackenzie needs money to finance her restaurant business idea and her parents are willing to see that Mackenzie receives the money she needs. Although Mom and Dad believe they are granting Mackenzie a loan, Mackenzie treats their money as a capital investment in the corporation. Mackenzie will be surprised when Mom and Dad start asking for interest and principal payments three months after the business opens. In fact, Mom and Dad want their payments and they also want

Mackenzie to switch suppliers and change her menu.

If Mackenzie had taken the time to talk to her parents about specifics before she took their money, she would have also discovered that Mom and Dad, who stick to bonds and certificates of deposit as investments, are extremely risk averse in spite of their desire to help their daughter. As such, Mom and Dad have an emotional need to see at least portions of their money returning to them on a regular basis. Mackenzie also might have discovered that although her parents wanted to treat the money as a loan, they expected child-parent roles to apply when making business decisions. It does not matter to Mackenzie's parents that their own expectations about managing the business are inconsistent with traditional loan transactions. Ultimately, Mackenzie is unhappy and her parents are unhappy, which strains their family relationship.

Although Mackenzie did not have success in her family loan endeavor, with proper planning, securing funding from family and friends can actually be beneficial to both parties. The process of creating a loan agreement or a partnership agreement (as discussed in Section V(C)) and the agreement itself are important. Negotiating with your family or friends over using their money can reveal those situations in which no deal makes sense, and for a deal that does happen, creates a shared set of expectations that reduces the chances for disaster. If the money is given as an investment in the business, you need to decide ahead of time the degree, if any, to which your family or friends will be involved in management. If the money is given as a loan, you must agree when repayment is to begin, the rate of interest (if any), the amount of the principal payments, and the consequences that will follow if you fail to repay on time.

Remember that your acceptance of money and the role your family or friends play in the business can affect the way the law defines your business structure and can have profound consequences for them. For example, if you operate a sole proprietorship, and your best friend invests in the business, she may have become your general partner and may be liable for all the debts of the business. Forming a partnership may be exactly what you both desired—or not. Making these decisions without planning for them may create unfortunate circumstances.

#### **b. Commercial lenders**

To obtain a commercial loan, you should expect a lengthy application process. Businesses must provide collateral to secure the loan—an asset that the bank can foreclose upon to recover its losses in case of default, preferably real estate or other assets that depreciate slowly over time. Most start-up businesses do not have much that can be used as collateral. As a result, banks generally require your personal

guaranty and collateral from your personal assets, even if you form a separate entity to house the business. Essentially, you will have to secure the loan with your home or other valuable property to get funding. Again, keep in mind that you can lose your house and other collateral if you default on the loan.

There are two general types of commercial loans—term and seasonal. A term loan is a fixed asset loan, meaning that it is used to purchase fixed assets like real estate and equipment. The assets purchased are then collateralized. Usually the loan is an installment loan, which is paid monthly. The second type, a seasonal loan, is used to satisfy a business's need for working capital. Because most businesses face a lag or delay between when it must pay expenses (such as when purchasing inventory) and collecting income (such as when selling inventory), a working capital loan or line of credit is used to bridge the gap. These loans allow the purchase of inventory, the payment of rent, wages, and the like. Many lenders require that all company assets be pledged as collateral. A seasonal loan generally allows small businesses to repeatedly draw and pay down the loan over the course of the year. Essentially, the seasonal loan works like a secured credit card arrangement.

### **c. Government loans**

The SBA offers loans and lease programs to encourage banks and other financial institutions to lend money to small businesses. The SBA does not make the loans itself, rather it guarantees a high percentage of the amount lent, thereby encouraging banks to make loans that they might not normally make. See the SBA web site at [www.sba.gov](http://www.sba.gov) or call 1-800-U-ASKSBA (1-800-827-5722). You can also get information at the SBA office that is closest to you.

### **d. SBA micro loan programs**

The SBA Micro Loan Program provides funding to nonprofit intermediaries who then make loans to entrepreneurs. The loans are typically small, ranging from under \$500 up to \$35,000. For more information on the SBA Micro Loan Program in Tennessee, see Appendix A for contacts that can help you.

### **e. Special loans (women and minorities)**

Some private loan programs encourage business development by minorities, women, and people with disabilities. Also, the SBA offers special programs for women and minorities. These programs help to develop viable loan application packages. Socially or economically disadvantaged individuals may also benefit from some SBA licensed Specialized Small Business Investment Companies.

For information on minority business opportunities, see the U.S. Department of Commerce Minority Business Development Agency web site at [www.mbda.gov](http://www.mbda.gov), which contains helpful information about minority business development. A woman or minority business owner may also benefit from the Tennessee Valley Authority's (TVA) long history of support. See the TVA web site for information at [www.tva.gov](http://www.tva.gov). Also, Appendix A includes contact information regarding loan financing and other helpful contacts for women and minorities, including contact information for minority businesses interested in securing government contracts.

#### **f. Investors**

If you have found potential private investors, you are giving them a slice of the pie. Under this scenario, you do not have to repay their investment, but you will have to share the profits with them, and, perhaps, allow them to have input or even control over management decisions.

##### i. Active

An active investor is actively involved in the business either in management or in day-to-day operations.

##### ii. Passive

Passive investors put up money, but do not take part in running the business on a day-to-day basis.

## **V. CHOOSING A BUSINESS FORM**

### **A. Introduction and Fundamental Considerations – Limitation of Liability and Tax Consequences**

Whether you mean to or not, at some point you, and perhaps your co-venturers, will elect a form of business structure. If the business begins without a designated form, it will, by default, be either a sole proprietorship or a general partnership, because to be a sole proprietorship or partnership all you have to do is start operating as one. Limited partnerships, limited liability partnerships, corporations, and limited liability companies are among the other forms of business entities available to Tennessee entrepreneurs. The Tennessee Secretary of State's website, [www.state.tn.us/sos](http://www.state.tn.us/sos), provides filing guides for all Tennessee entities. The election of each of these business forms requires deliberate action, including making or causing to be made a filing with the Secretary of State in accordance with Tennessee statutory law. Each business form is organized and maintained differently.

Therefore, before forming a business, you should first determine which type of business best serves the reasonable expectations of everyone involved in the venture.

When choosing a business form, evaluate the governance structure, third-party liability, and tax consequences of each option to determine which form best suits the goals of the business. The level of personal liability to which a business venturer subjects herself is an important consideration when choosing a business form. Operating your business through certain forms means you, and perhaps your co-venturers, are personally liable on an unlimited basis for all business liabilities, while operating your business through other forms shields any personal liability other than the loss of initial investment and liability for personal acts. It is also important to remember that adequate insurance for each entity should always be maintained.

Business tax management is also an important job for an entrepreneur. This Article outlines the most basic types of business taxes and points the entrepreneur in the right direction for more specific tax advice. No entrepreneur should go forward with a business venture without specific tax advice. Each business form has a different tax structure and may be taxed by several different tax authorities, potentially including foreign, federal, state, and local governments. Specific taxes are discussed in Section VI of this Article.

The U.S. government levies an income tax on business earnings. Business earnings are reported on a business's federal income tax return (if applicable) and/or on the owner's personal tax return, and may be taxed at one or both of these levels depending upon the business form you choose to operate. Basically, the legal form of your business determines the way your business income is reported, taxed, and paid. In this regard, it is important to remember that laws and regulations change from year to year, and whether one business form benefits you from a tax perspective will depend on your personal tax bracket, whether or not you can or wish to take advantage of preferences for employee benefits, and other factors. Tax treatment is one important factor, but do not allow it to be the only factor you consider when choosing a structure for your new business.

The next sections describe the structure and tax and liability features of various forms of business available to entrepreneurs in Tennessee.

### **B. Sole Proprietorship**

Only one person may own and operate a sole proprietorship. There is no entity holding the assets and operations of the business; thus, there are no ownership interests in the business. All operations are actually conducted by the owner, directly or through one or more agents, even though the business may operate under a

business name. Although only one person runs a sole proprietorship, employees can be hired. Sole proprietorships cannot exist for people who share ownership (see Section V(C)). A sole proprietorship may not be a desirable entity if the nature of your business exposes you or your business to significant actual or potential liabilities or if potential business losses could exceed the value of your personal assets. It is also important to note that banks and professional investors favor the limited liability afforded by limited liability partnerships, limited liability companies, and corporations.

Sole proprietorships are easy to form and operate. You simply obtain a business license and/or permit from the county, city, and/or municipality where the business will be located and start operating. All control of the business is in the hands of the owner.

While it is easy to operate a sole proprietorship and all business assets and profits belong to the sole proprietor, remember that you are subject to all debts and legal liabilities of the business. Therefore, if the business owes money and cannot pay, you must pay those debts with your own assets. If you do not pay, creditors can proceed against you and your personal assets. Thus, sole proprietorships should obtain insurance or other contractual protections for liability.

You and your business are one-in-the-same, so any income must be reported as income on your personal income tax return. No periodic filings with stock regulators or the Secretary of State are required. Therefore, the business earnings of a sole proprietorship are taxed only once. A business operated as a sole proprietorship does not have to pay corporate income tax because the business is not organized as a separate entity, and the business's net income is already reported to the U.S. government as ordinary income on the individual owner's personal income tax return on Form 1040. No additional federal income tax returns need to be filed. However, the income and loss of the business must be calculated and reported on Schedule C of Form 1040 (or Schedule C-EZ if the business has no employees or losses, and business expenses do not exceed predetermined amounts). Additionally, if business earnings are expected to exceed a specific amount, then quarterly estimated federal income tax payments should be made. Quarterly federal income tax payments are required to be made by April 15th, June 15th, September 15th, and January 15th for the immediately preceding calendar quarter. The aggregate annual amount of estimated taxes paid is based on your estimated income tax liability for that year. Paying quarterly estimated tax payments prevents you from having to pay all your taxes in one lump sum at the end of the year. If you over-estimate, you will receive a refund, and if you under-estimate, you will be responsible for paying the difference and any penalties that may apply. Your estimated tax payments include self-employment tax, which is discussed in Section VI.

## **C. Partnerships**

### **1. Introduction and Basic Tax Information**

Three types of partnership are discussed in this Article: partnerships (commonly known as general partnerships), limited liability partnerships, and limited partnerships. In Tennessee, a stand-alone statute modeled after the Revised Uniform Partnership Act governs partnerships. Partnerships allow for flexible distribution of ownership and income and for the addition of new partners over time. Partnerships can be very useful for entrepreneurs who lack sufficient capital or expertise outside their own field or who are overwhelmed by the workload if they try to operate the business themselves; the different people who make up the partnership each can bring capital, expertise, and extra hands to the business venture.

All three types of partnerships discussed in this Article (as well as limited liability companies) have the same basic federal income tax attributes. Partnership taxation is discussed in this section, followed by specific structural information regarding each type of partnership.

Regarding federal income tax, check-the-box provisions allow the business income that an unincorporated entity generates, whether or not distributed, to be subject to tax at either the entity level or member level, depending on whether the entity elects to be taxed as a partnership or a corporation. To make this election, the entity files IRS Form 8832. Entities that do not file a Form 8832 are automatically taxed as partnerships. General partnerships, limited liability partnerships, and limited partnerships (and other unincorporated entities, like limited liability companies) are subject to the IRS check-the-box provisions.

Like sole proprietorship income, partnership income is treated as the personal income of the business owner in an entity taxed as a partnership. Ownership interests in partnerships are often denominated in “units” or “partnership interests” and each partner may have different interests in profits, losses, and distributions. Income and losses “pass-through” the partnership to the partners. However, the partnership itself must file an informational income tax return with the Internal Revenue Service using Form 1065. On Form 1065, the partnership reports both its business earnings and how those earnings are allocated to each partner using its Schedule K-1, a copy of which is furnished to each partner for use in preparing the partner’s personal federal income tax return. The partnership simply allocates the tax to the partners—it is not responsible for paying the income tax itself. The partnership’s business earnings are taxed only once for federal income tax purposes, at the partner (owner) level. Each partner’s personal federal income tax return will show the partner’s share of the business income and his or her share of the business

losses. Accordingly, each partner is responsible for the associated taxes on that partner's allocated share of the partnership income (whether or not the partnership actually distributes or pays this income to the partner). Individual partners may be required or elect to remit quarterly estimated tax payments, as discussed above.

In addition, Tennessee imposes franchise and excise (F&E) taxes on most businesses. The Tennessee franchise tax is equal to \$0.25 per \$100 of either a business's net worth or the actual value of the property owned or used by a business, whichever is greater. The Tennessee excise tax is a 6.5% tax on business earnings. Limited liability partnerships and limited partnerships (but not general partnerships) generally are subject to the F&E taxes. If your chosen business entity is subject to the F&E taxes, then your business is required to file an annual F&E tax return with the State of Tennessee. For more information on the F&E tax in Tennessee visit [www.tennessee.gov/revenue/tntaxes/fae.htm](http://www.tennessee.gov/revenue/tntaxes/fae.htm).

## **2. General Partnership**

General partnerships have two or more owners, each of whom bears personal responsibility for all the operations and liabilities of the business and shares equally in both profits and losses, unless otherwise agreed. Each partner, as an agent of the partnership, has the power to bind the partnership. Partners may be individuals or entities, but the discussion (and the following discussion of limited liability partnerships, limited partnerships, limited liability companies, and corporations) focuses on individual owners rather than entity owners. A general partnership is created when two or more persons associate as co-owners of a business for profit. Typically, the co-owners enter into a partnership agreement. While a partnership agreement can be oral, it is strongly recommended that a written agreement be used to set out all the terms of the partnership. The use of a written agreement is beneficial because it will help to avoid later confusion and inter-partner disputes, and because it is easy to create a partnership inadvertently—even when a partnership is not what you or your “partner” had in mind. Your partnership agreement should, at a minimum, address the following: the expectations of the partners as to the goals and nature of the business; the contributions of each partner (cash, labor, experience, sales leads, loans, etc.) and the valuation of those contributions; the responsibilities of each partner; the authority to sign documents on behalf of the partnership; compensation; record keeping; dissolution; recruitment of additional partners; and amendment of the partnership agreement. Additionally, the partnership agreement should include provisions that relate to allocations and tax distributions because such provisions are highly important in general partnerships. Operating under a written partnership agreement is the best way to develop shared expectations, uncover potential problems, and set up the mechanisms by which disputes will be resolved. Although the advice or participation of an attorney is not required to produce a valid

partnership, such advice or participation can be very helpful and is highly recommended.

The personal liability of each partner for the obligations of the partnership is the same as that of the sole proprietor for the obligations of his or her sole proprietorship—unlimited. As a member of a partnership, however, your actions taken in the business, as well as those of your partner(s), can legally bind the partnership and, therefore, you. Each partner is responsible for the acts of other partners who act in the name of the business, and unless otherwise provided in the partnership agreement, each partner has management rights equal to those of each partner. Each partner is also personally liable for all debts and other obligations of the business. However, partners will not be held liable for acts that outside of the scope of the partnership even if a partner conducts these activities in the name of the partnership.

### **3. Limited Liability Partnership**

Much like general partnerships, limited liability partnerships (LLP) may be created when two or more persons associate as co-owners of a business for profit and register as such with the Secretary of State. All co-owners share equally in both profits and losses of the business, unless otherwise agreed. Each limited liability partnership co-owner (partner), as an agent of the partnership, has the power to bind the business entity. However, the entity solely assumes all business obligations, thus limiting the liability of all co-owners. While co-owners risk losing their capital investments in the business, the LLP protects any money or other assets they have not invested in the business.

Generally, the LLP provisions are found in the same statute as the general partnership provisions, Tennessee Code Annotated Title 61, and the laws of partnerships govern LLPs. However, three main exceptions exist: (a) distributions are limited to circumstances in which the entity is not insolvent, TENN. CODE ANN. § 61-2-607 (2001); (b) filings and related fees are required for formation and maintenance, TENN. CODE ANN. § 61-1-1001 (2007); and (c) as discussed above, partners are not personally liable for the obligations of the partnership.

### **4. Limited Partnership**

A limited partnership allows general partners to raise needed capital by granting non-management ownership interests to investors in exchange for money, property, or other assets. Limited partnerships must register with the Secretary of State's office to ensure that they will be treated as a limited partnership. All business co-owners share equally in all profits and losses of the business, unless otherwise agreed.

A limited partnership must be comprised of at least one managing business co-owner (a general partner) and at least one passive business co-owner (a limited partner). There can be more of either type of partner, but there must be at least one of each.

The general partner is a managing co-owner who is an agent of and has the power to bind the limited partnership, while limited partners are passive investor co-owners who generally do not have management or agency power or authority. General partners retain control over business operations and have unlimited liability to third parties for all business obligations, as in a general partnership. Conversely, limited partners enjoy limited liability. Generally, the most that is at risk for each limited partner is his or her capital investment in the business, unless the limited partner acts in his or her own name or otherwise acts in a manner to subject himself or herself to personal liability. When a limited partner participates in the control of the business, however, the limited partner may be treated as a general partner for personal liability purposes, making that limited partner personally liable for all partnership obligations. In addition, a limited partner who participates in the control of the business is personally liable for partnership obligations to anyone who transacts business with the partnership and reasonably believes (based on the limited partner's conduct) that the limited partner is a general partner.

In Tennessee, a stand-alone statute based on the Uniform Limited Partnership Act governs limited partnerships. Limited partnerships must register with the Tennessee Department of Commerce, and a certificate of limited partnership must be filed with the Tennessee Secretary of State. If you are considering formation of a limited partnership, you should consult an attorney. There are many rules and restrictions that apply to the formation, maintenance, and operation of a business as a limited partnership. Ignoring or breaking those rules and regulations can subject you to civil or, in some cases, criminal liability.

#### **D. Corporation**

Corporate status suggests success and legitimacy to some outsiders. The truth is that incorporating can be a mechanical, relatively inexpensive process, and the fact of incorporation does not mean that the business is more legitimate or likely to succeed.

Ownership interests in for-profit corporations are represented by shares of stock (which, most commonly, are evidenced by stock certificates). Therefore, the owners of a corporation are its stockholders or, in Tennessee, shareholders. The shareholders meet annually to elect a board of directors and make decisions regarding other major matters. The board of directors oversees the business affairs of the corporation and meets from time to time to plan and approve corporate actions. The directors generally meet as a board under the leadership of a chairman.

The board also selects corporate officers, who are management agents for the corporation. The statute that governs Tennessee corporations mandates certain officer positions. In a small business, one person could be the sole shareholder, chairman of the board of directors, and president of the corporation simultaneously. In Tennessee, you need only one other human in order to run a corporation, a corporate secretary, whose responsibilities include keeping minutes at meetings, maintaining records, and signing stock certificates with the President. Despite the title, the corporate secretary is not the same thing as a clerical secretary—the corporate secretary does not need (and typically does not have) any clerical skills at all.

Corporate organization can create flexibility in obtaining capital for both operational start-up and growth. Almost any combination of debt and equity financing is legally possible and, for businesses with employees, stock incentives can substitute for money to reward or encourage productivity. Prospective investors are attracted to the corporate form because it provides them with ownership, indirect (but fundamental) control over the business, and limited personal liability. If you incorporate, remember that your corporation must comply with meeting, recording, filing, and other requirements and the other rules and regulations that govern corporations. In certain cases, a failure to comply with legal requirements may lead to the dissolution of the corporation or a loss of limited liability status. Compliance with corporate laws requires the assistance of an attorney as there are many requirements—more than those applicable to partnerships. *The corporate shield is a great thing, but make sure you are actually carrying it.*

A business incorporates by filing its charter (sometimes referred to in Tennessee as articles of incorporation) with the Tennessee Secretary of State. Next, you will have an organizational meeting at which the charter is ratified, bylaws are adopted, directors and officers are selected, the corporate seal is approved, and stock is initially issued. The corporate records should also be set up at this time. These records should include copies of all filings with the state (including the charter), permits, bylaws, minutes, IRS election forms, stock certificates and a list of stockholders, directors, and officers.

As incorporation generally is an unfamiliar and time-consuming process, consultation with an attorney is highly recommended if you choose a corporation as your business entity. Choices you make regarding the charter, bylaws, board of directors, and the authorization and issuance of stock have long-term implications for the structure and operation of your business.

A corporation shields its shareholders, directors, and officers from personal liability for the obligations of the corporation. Shareholders do not risk personal

money or assets beyond what they have invested in the businesses. Only the corporation is responsible for its debts, liabilities, and other obligations. In this way, the corporate shield protects the shareholders. However, when acting in an official capacity as an agent of the corporation (e.g., by signing checks or executing documents) remember what hat you are wearing. You should take pains to identify yourself at all times as an agent acting on behalf of the corporation. Otherwise, you may find that you have incurred a personal—not corporate—obligation. *Again, you cannot use the corporate shield if you are not carrying it.*

Assume Jack and Jill decide to start a coffee house called Jittery Joes, Inc. They each receive a 50% interest—or 100 shares of stock—in their new corporation, in exchange for \$10,000 that each invests in the corporation. In addition, they arrange for the corporation to borrow \$50,000 from the bank. Two months after they open shop, a worldwide coffee blight destroys every plant and they are driven out of business. Under those circumstances, the bank will only be able to proceed against the corporation and its assets. Jack and Jill will lose their collective \$20,000 investment, but Jack's personal bank account and Jill's antique jewelry collection will be safe. Keep in mind, however, that this “corporate veil” can be pierced (for example, in cases of fraud or failure to properly form, maintain, and administer the corporation), and it does not protect individuals who provide personal guarantees for corporate loans or who personally harm others or their property (even if acting in the name of the business).

Since most banks and other major financial institutions grant small businesses loans only with personal guarantees from business owners or others with significant financial assets, the corporate shield will be of little help to protect entrepreneurs from this sort of liability. It is useful, however, in shielding them from claims of suppliers and customers, who generally do not obtain personal guarantees. Furthermore, the corporate shield is very useful in insulating the shareholder from liability for torts (like personal injury) that the business—but not the shareholder—has caused. The limited liability of a business does not insulate the business owner for his or her own tortious acts (running down a pedestrian while driving a corporate vehicle, for instance).

There are important distinctions. The corporate shield protects shareholders from liabilities and other obligations of the corporation for which the shareholders are not otherwise responsible in their individual personal capacities. Shareholders that personally guarantee debt or independently commit a tortious act are responsible for those individual actions and will remain subject to personal liability. Adequate insurance for both the corporation and the shareholders should always be maintained.

## **1. Taxation of a C Corporation**

For federal income tax purposes, most corporations are C Corporations (referring to the subchapter of the Internal Revenue Code that applies). A C Corporation may have more than one class of stock and different numbers and kinds of shareholders (unlike an S Corporation, discussed in the next section). C corporations may be subject to double taxation (as discussed in the following paragraph), but wages and other compensation, as well as the cost of health insurance, dependent care assistance, and some term life insurance, are deductible for federal income tax purposes. In Tennessee, any business organized as a corporation is generally subject to the Tennessee F&E tax.

A corporation is considered a separate legal entity and, as such, files its own federal income tax return, Form 1120, to report business income and pay federal income tax on business earnings. After the corporation pays federal income tax on its earnings, the shareholders and employees must pay tax on their dividends (and other corporate distributions) and wages, respectively. Wages are, of course, an expense to the corporation, and generally are deductible for federal income tax purposes. The IRS effectively taxes some or all of the corporation's earnings twice: at the corporate level and at the shareholder level to the extent that the corporation distributes that income to shareholders. This is referred to as double taxation. One way that corporations can eliminate the effects of double taxation when transferring funds from the operations to employee/owner is by making payments to these employee shareholders as wages (compensation), rather than as dividends. Providing reasonable compensation may lower corporate taxable income and, thus, corporate income tax due. This effectively means that the funds are taxed only at the individual—not the corporate—level. There are limits to this practice, and the advice of a tax professional can be indispensable in structuring the corporation to minimize the total federal income tax paid. Also, tax brackets for corporations differ from individual tax brackets, making the assessment of cost and benefit more complex. The IRS web site, [www.irs.gov](http://www.irs.gov), provides further information on this subject.

If you incorporate, you will have to decide what sort of corporation you will be for IRS purposes. You need not be a C Corporation. It is possible to be an S Corporation and avoid double taxation altogether while still enjoying the limited liability that incorporation provides.

## **2. S Corporation**

Federal income tax laws allow for the S Corporation as a means of encouraging small business development. The S Corporation is a corporation that elects to be

taxed under subchapter S (rather than subchapter C) of the Internal Revenue Code. For the most part, the S Corporation passes its income, losses, deductions, and credits through to its shareholders for inclusion on their personal returns. A corporation can thus be taxed in a manner similar to that of a partnership—on a “pass-through” basis—and its income therefore is taxed at the individual rate instead of the corporate rate. Therefore, in many cases, shareholders benefit during the early years of a business, when losses are likely, and earnings avoid double taxation. To be eligible for S Corporation treatment, the corporation must: (a) be a domestic corporation with only one class of stock, (b) have no more than 75 shareholders, (c) have only citizens or legal residents of the U.S. as shareholders, and (d) gain the agreement of all its shareholders. For most start-ups, S Corporation status is more desirable than C Corporation status if the corporate form is chosen. However, the S Corporation limitations on the number and kind of shareholders and classes of stock may be unachievable with certain investor bases and are likely to reduce venture capitalist interest.

A corporation files Form 2553 with the Internal Revenue Service to elect subchapter S status. Although an S Corporation does not pay income tax, it is required to file its own informational tax return, Form 1120S. Each S Corporation shareholder pays tax on his or her share of the corporation’s business earnings and reports those business earnings on his or her individual income tax return.

### **E. Limited Liability Company**

A limited liability company (LLC), like an LLP, blends the limited liability of a corporation with the tax benefits of a partnership. It maintains its status as a legal entity separate from its owners, yet is taxed as a partnership by default or choice. An LLC is owned by its members, and it can be organized in accordance with one of three possible LLC management structures in Tennessee. (In other states, only two LLC structures are available.) The first is a member-managed structure, in which all members have co-equal management and agency powers like those of general partners in a general partnership. Member-managed LLCs are most appropriate for start-up businesses in which only a few people, all active in the business, hold ownership interests. The second structure is a manager-managed structure, in which the members elect managers that have powers similar to those of general partners in a limited partnership. The third is a director-managed structure, in which the LLC has a board of directors and officers like a corporation. The articles of organization shall set forth the management structure of the LLC.

Because of their flexibility, LLCs have significant benefits for many entrepreneurs over S Corporations. There are no statutory restrictions on the number or nature of an LLC’s members, and LLCs may have more than one class of

membership interests (similar to a C Corporation, which may have more than one class of stock).

To create an LLC, you must file articles of organization with the Tennessee Secretary of State. Visit the Secretary of State's web site, [www.state.tn.us/sos](http://www.state.tn.us/sos), for more information on meeting specific filing requirements. The owners of an LLC should also enter into an operating agreement. Much like a partnership agreement for partnerships, this document governs the LLC and contains information such as the ownership percentages of members, the arrangement for distribution of profits and losses, the responsibilities of the parties, and should include a provision that states what will happen if an owner leaves the LLC.

An LLC provides its owners the protection of limited liability, just like a corporation. Although each co-owner is an agent and has the power to bind the LLC in a member-managed LLC, the entity's obligations are solely its own. Therefore, LLC co-owners, like corporate shareholders, enjoy limited liability, thus protecting personal money and assets not invested in the business. An LLC co-owner risks only his capital investment. Both manager-managed and director-managed LLCs provide owners with limited liability.

The business income an LLC generates, whether distributed or not, is subject to federal income tax at either the LLC or member level, depending on whether the LLC elects to be taxed as a partnership or a corporation. LLCs are taxed as partnerships by default, but the LLC may elect to be taxed as a corporation. To make this election, the LLC files IRS Form 8832. If the LLC elects to "check the box" to be taxed as a partnership, its federal income tax is reportable and payable by the business co-owners just like a partnership. The LLC files an informational return (Form 1065) and issues Schedule K-1 to its members, who each report the income or loss and pay applicable taxes. Alternatively, the LLC may choose to be taxed as a corporation, in which case both the business and its members will pay applicable tax on business income. An LLC is generally subject to the Tennessee F&E tax, but some exceptions do exist.

## **VI. REGULATIONS**

### **A. Business Licenses**

Depending on the nature of your business and its location, it may be required to have various types of state and/or municipal licenses, certificates, and/or permits. As different licenses are administered by various agencies, it is best to check with the County Clerk in the county in which your business is located and with the Tennessee Department of Revenue. Contact information can be found in Appendix A.

### **B. Business Insurance**

Any prudent business owner should carry business insurance to protect his or her business against fire, theft, flood, and other losses. Many types of insurance exist including: property, liability, business interruption, worker's compensation, group health, life, disability income, "keyman" insurance, and others. The most common insurance mistake is not carrying enough liability coverage. It is unwise to believe that a judgment will not hurt you because your business has little revenue or assets. At a minimum, you will need property insurance, liability insurance (including motor vehicle insurance on all business vehicles), and if you have more than five employees, worker's compensation insurance. If you have a business loan, your banker also may require "keyman" insurance, which protects key individuals in the business. "Keyman" insurance helps the lender ensure that the bank will get its money back if something happens to the key individual responsible for making the business generate a profit.

It may also be a good idea to secure business interruption insurance. In the event your business is the victim of fire, flood, or other specified catastrophes, business interruption insurance will provide money to compensate for the period your business does not operate.

Also, be aware that if your business provides products for public use, you should carry products liability insurance. Products liability insurance indemnifies claims from third parties who claim your product injured them. It also provides defense benefits.

### **C. Federal Employer & Employee Identification Numbers**

In most instances, a business must file IRS Form SS-4 to obtain a Federal Employer Identification Number (EIN). Obtaining an EIN allows your new business to comply with federal income tax regulations, as well as with Social Security and Unemployment Insurance regulations. Form SS-4 can be obtained from the IRS web site at [www.irs.gov/pub/irs-pdf/fss4.pdf](http://www.irs.gov/pub/irs-pdf/fss4.pdf). You may also contact the IRS by telephone at 1-800-829-1040 or by locating a local IRS number in your telephone book.

### **D. State Tax Registration Number**

The State of Tennessee requires that most businesses apply for a State Tax Registration Number (SUTA). The SUTA is different from the Federal Identification Numbers discussed above. A separate application must be filed with the Tennessee Department of Revenue to register your business with the state for

the state taxes that it must pay. The Tennessee Department of Revenue is a helpful place to seek information pertaining to state business taxes. See Appendix A for contact information.

### **E. Federal Self-Employment Tax**

So far in your career as an employee, your employer has withheld a portion of your income tax from each paycheck. As a business owner, you are responsible for paying self-employment tax. The good news is that you can deduct 50% of the self-employment tax you pay on your personal tax return. You should calculate and report your self-employment tax on Schedule SE of Form 1040. If you expect your estimated annual tax on self-employment income to be less than \$1,000.00, you are not responsible for making estimated payments. Also, as a business owner, you are not responsible for FICA tax—self-employment tax replaces it.

### **F. Sales and Use Tax**

The State Department of Revenue requires the taxation of sales, use of tangible personal property, and certain services. After you file the Application for Registration discussed above, the State will issue you a State Tax Number to use when filing all state taxes. If your business is subject to this tax, the business must collect and then remit the tax to the State of Tennessee. The State will then remit the local or county portion of the tax to the appropriate local or county agent. If you are exempt under any of the numerous exemptions to the Sales and Use Tax, you should maintain file copies of the appropriate documentation, such as resale or tax-exempt certificate of the purchaser in your files. See the Tennessee Department of Revenue's web site for more information at [www.state.tn.us/revenue/tntaxes/salesanduse.htm](http://www.state.tn.us/revenue/tntaxes/salesanduse.htm).

### **G. Miscellaneous Taxes**

Your business will also be subject to various local taxes. Information on these particular taxes can be gained from your local tax assessor's office.

### **H. Employee Considerations**

If you hire even one employee, state and federal guidelines apply that you must follow. You should be familiar with the Fair Labor Standards Act (FLSA), which establishes guidelines for minimum wage, overtime pay, child labor standards, and record keeping. The FLSA guidelines apply to employers of both full and part-time employees. Visit the Department of Labor's web site at [www.dol.gov/elaws/flsa.htm](http://www.dol.gov/elaws/flsa.htm) to learn more. For more information regarding FLSA

and the State of Tennessee, contact the Tennessee Department of Labor and Workforce Development, Division of Labor Standards. See Appendix A for contact information.

You should also be familiar with Title VII of the Civil Rights Act of 1964 and the Tennessee Human Rights Act, which are the federal and state anti-discrimination laws that apply to employers. You should also be aware of the Occupational Safety and Health Act (OSHA), and the Tennessee Occupational Safety and Health Act (TOSHA), which require employers to provide safe workplaces for employees. Visit the following web sites for more information: OSHA at [www.osha.gov](http://www.osha.gov), and TOSHA at [www.state.tn.us/labor-wfd/tosha.html](http://www.state.tn.us/labor-wfd/tosha.html). Also, the National Labor Relations Act (NLRA) regulates labor practices by defining the rights of employees and employers. It is enforced by the National Labor Relations Board (NLRB). As it would be impossible to explain all of these acts as they apply to your specific business in this Article, see Appendix A for contact information. Most of them have user-friendly web sites or free explanatory publications available by mail.

### **1. Federal Withholding and SSI**

As an employer, you must see to it that your business fulfills its responsibility to withhold income tax from your employees' paychecks. This withholding is based upon each employee's filing status, the number of dependents he or she has, and the amount of wages or salary the employee is due. Federal law also requires that your business withhold each employee's share of Social Security tax and Medicare tax (Federal Insurance Contributions Act, FICA). Your business must also pay the employer's share of the FICA tax. The Internal Revenue Service's Publication 15, available at [www.irs.gov/pub/irs-pdf/p15.pdf](http://www.irs.gov/pub/irs-pdf/p15.pdf), explains federal withholding and SSI in detail.

### **2. Federal and State Unemployment Taxes**

Your business is also responsible for paying the federal unemployment tax (FUTA) on your employees. A sole proprietor or a partnership is not responsible for paying FUTA on the compensation of the sole proprietorship or the partners. If your business is subject to FUTA payment, use Form 940 for calculation and payment of the tax.

The State of Tennessee also imposes a state unemployment tax (SUTA). Your business must register for this tax with the Tennessee Department of Labor and Workforce Development if it utilizes employees.

## **VII. PROTECTING YOUR INVESTMENT – A PRIMER ON INTELLECTUAL PROPERTY**

Patents, copyrights, trade secrets, and trademarks are some of the most important forms of intellectual property, and the protections and pitfalls each presents to entrepreneurs are very different. Intellectual property laws recognize intangible rights in the exploitation of tangible things like new machines or industrial processes, software programs, secret recipes, business names or plays. Understanding intellectual property provisions enables you to protect yourself from exposure to lawsuits by other business owners and to protect your own intellectual property from unauthorized use by others.

The short explanations that follow outline the basic types of intellectual property rights recognized in the United States and highlight their competitive advantages and disadvantages.

### **A. Trademarks**

As soon as you start thinking of a name, logo, or package design for your business, you have entered the trademark zone. Trademarks are symbols used to represent the commercial reputation of a product or service. For example, a trademark may be a logo, word, name, initials, slogan, drawing, likeness of a person (dead or alive, real or fictitious), literary character, music, package design, or architectural feature. Trademarks used by service businesses are called “service marks” but we will use “trademarks” or “marks” to refer to both types of marks to keep it simple.

As a business owner, understanding trademark protection will be important to you in two ways. First, you must be careful not to infringe on the trademark protection enjoyed by other business owners. Using a mark that is already being used by someone else, or using a mark that is so close in appearance to someone else’s mark that consumers will be confused by the similarity, constitutes infringement. Second, you can protect your own designs and logos through trademark registration on a federal and/or state level. Trademark registration protects against other business owners’ use of your distinctive mark or a confusingly similar mark for their own profit. In sum, trademarks have important commercial significance and both offensive and defensive implications for the entrepreneur. Understanding trademark protection will help you gain the greatest protection possible for your new business identity and avoid being sued by another trademark holder.

## **1. Trademark Search**

Before you select your mark, you should conduct a trademark search at both the state and federal levels to be sure that your mark will not infringe on an existing mark. To establish your business identity with a minimum of risk, do not select a name, design, or logo for your business, service, or product that is identical or similar to one already being used by a competitor. Basically, you are infringing on another business owner's rights when you use, for example, a design or logo that "belongs" to that business owner. Ignorance or independent creation of a confusingly similar mark will not protect you! Trademark owners do not have to prove you stole their work to claim infringement. Trademark owners only have to prove that you are using a confusing mark, which constitutes infringement.

If you choose to develop your business identity without proper research, you could end up owing another business owner money damages and profits, being forced to recall products produced under the infringing mark, compelled to destroy packaging and advertising materials, and forced to cease using what you thought was your own mark.

Before you commission a professional to complete a trademark search, you can take inexpensive steps to narrow your choices or eliminate ideas. Two libraries in Tennessee have deposits of the U.S. Patent and Trademark Office directories. Using these materials takes some practice, but with the librarian's assistance, you can find your way around them. The libraries are the Shelby County and Memphis Public Library ((901) 725-8877), and the Stevenson Science Library at Vanderbilt University ((615) 322-2717). Remember, however, that these directories list only those marks federally registered with the U.S. Patent and Trademark Office, not unregistered marks or state-registered marks. Since use of a mark is enough to create trademark rights, other business owners who are using unregistered or state registered marks have trademark rights that you must respect.

Instead of searching directories yourself, you may prefer to commission a search by a firm that specializes in investigating the availability of trademarks. An investigation firm should report both conflicting registered marks and potential problems with unregistered or state-registered marks. You should employ an attorney to interpret the results. If your attorney advises you that your mark is available for use, then you should register the mark federally with the U.S. Patent and Trademark Office and/or at the state level. Trademark registration is discussed below.

## **2. Trademark Registration**

Although trademark rights spring from use and not registration, registering a trademark at the federal or state level can help prove that you have the right to use the mark and puts others on notice, which means that others are aware that the mark is yours, not theirs, to use. Your registered mark will be available to others conducting trademark searches (discussed above). Essentially, registration prevents others from infringing on your rights.

Remember that your ability to use a mark depends on whether anyone else can successfully claim that they have wider use of the mark or have been using the mark for a longer period of time. Basically, your right to use a mark is determined in comparison to the rights of a competitor. Due to the “use it or lose it” nature of trademarks, registration alone does not protect you. You must use the mark to claim ownership!

### **a. Federal registration**

You can register your trademark at both the federal and state levels. Federal registration can be a tortuously long process, and unlike Tennessee trademark registration discussed below, it is not a do-it-yourself proposition. The United States Patent and Trademark Office has complicated filing requirements and required application forms and procedures. As stated above, trademark registration is not available to marks that are confusingly similar to a previously registered mark. Other reasons trademark registration would not be available include marks in the form of words or symbols that do not identify the source of goods or services and marks that disparage or falsely connect with people, institutions, beliefs, or national symbols. Marks that imitate or consist of the U.S. flag or other national insignia, the flag or insignia of a state, municipality, or other country are also not available to be registered.

Some marks may not be registered unless a secondary meaning is shown. For example, without showing a secondary meaning, if your mark is a surname, name, portrait, or signature of a living or dead person who has not granted permission for use, then you are out of luck. The same is true for a mark that only describes the goods or services it names, for example, “Housekeeping Services” or “Hamburgers.” Conversely, a mark that is deceptively misdescriptive also cannot be registered without showing a secondary meaning. Finally, a mark that basically describes or misdescribes a geographic area also will not be accepted for federal trademark registration unless a secondary meaning can be shown.

Federal registration offers the broadest protection that you can get for your

trademark. Owners of federally registered trademarks have immediate access to federal courts, in addition to state courts, and both courts may issue injunctions to stop infringers. Federal registration also puts your mark in the sights of other searchers, who must avoid using your mark. Even if you cannot afford to register your mark during the start-up process, you should register it at the federal level as soon as feasibly possible. If you are not yet ready to open your business but want to secure your mark, the U.S. Trademark Office allows you to file an “intent to use” registration. Contact the U.S. Trademark Office for more information. Appendix A lists contact information.

### **b. State registration**

If your business will be limited to the State of Tennessee, you may prefer to register only in Tennessee. State registration is a faster and less expensive alternative than federal registration. In Tennessee, you can check the availability of a business name by calling the Secretary of State’s Trademark Office ((615) 741-0531) or using the search engine at [www.tennessee.gov/sos/bus\\_svc/trademarks.htm](http://www.tennessee.gov/sos/bus_svc/trademarks.htm). Unlike the U.S. Trademark Office, you cannot file an “intent to use” registration in Tennessee. To register a mark, it must already be in use. Once in use, you may apply to register the trademark within the State.

If you do not choose to seek Federal registration or are waiting for your approval, you can start using a TM symbol whenever your mark appears on something. This symbol has no legal effect, but it does serve as a no-trespassing sign to indicate that you claim ownership of the mark. Some marks, however, cannot be registered until they become so closely associated with an established product or service through use. Campbell’s Soup probably would not make it if it was a new product, but its mark power trumps the “surname” problem.

Do not make the mistake of thinking that TM and the ® symbol are interchangeable. The ® symbol is available only to *federally* registered trademarks. If you use the ® symbol, or other alternate forms of it, without being registered, you could lose your right to recover for trademark infringement and be denied federal registration.

## **B. Copyrights**

Federal copyright statutes grant creators of literary or artistic works the exclusive right to copy or reproduce the work, to prepare derivative versions of the work, to sell copies, and to perform or display the work publicly. No state copyright laws exist. Copyright protection starts when an idea is fixed in tangible form. This means that copyright protection is yours as soon as you write it, draw it, or make it,

regardless of whether you seek copyright registration. This right continues until a set period of time has passed. The statute governing copyright sets out time periods depending upon the circumstances surrounding the copyright. This statute can be found at 17 U.S.C. § 101, et seq. When perusing this statute, remember that works created prior to 1978 may be subject to different time limits.

Having rights under the statute and enforcing them are two totally different things. Although copyright registration is not required to have rights under the copyright statute, registration is required to enforce copyright rights in court. You should register with the Copyright Office and put the public on notice for any work that is published or made public. Early registration allows you to enforce your rights. Enforcement can be difficult without proper proof that you are indeed the copyright holder. You can handle the copyright registration yourself, without resorting to an attorney. Public notice just means adding the © symbol, or simply the word “copyright,” followed by the year and your name, on whatever you seek to protect. You want to do all you can to avoid the nightmare of enforcing your copyright against other people.

Basically, the significance of copyright terms for the entrepreneur is two-fold. Copyright offers the creator of a work protection rights that extend far into the future. From a defensive perspective, the entrepreneur must exercise great caution to avoid trampling on someone else's rights—rights that may be decades old.

To understand the basic scope of copyright protection, remember that authors have the right to control their own particular expressions of ideas, but not the ideas themselves. If this were not the case, network television would not be swamped with multiple situation comedies that feature tight-knit groups of beautiful twenty-something characters with low-paying jobs living in fabulously spacious apartments in high rent cities. That example might lead you to wish for stricter copyright protection. However, it illustrates the flexibility left open to you and your competitors to exploit a commercially attractive idea.

From a different perspective, how do you avoid getting a nasty “cease and desist” letter, or worse, a lawsuit brought against you by a copyright holder? You should know that your independent creation of an identical or similar work is not copyright infringement. To establish infringement, a copyright holder must prove two things: first, that you had access to their work, and, second, that your work is substantially similar to theirs.

What if your idea builds from, or takes a portion of, someone else's work? The public policy exception of “fair use” allows the use of small portions of someone's copyrighted work without infringing on their rights. Basically, this means that you

can build on someone else's work, even using character names, settings, or famous phrases (e.g., "Frankly my dear, I don't give a damn.") without being guilty of copyright infringement. However, some of these uses may raise trademark problems in certain instances. Also, be warned that the fair use doctrine is only rarely available in a commercial setting.

Entrepreneurs most frequently get into copyright trouble with advertising and promotional materials, and it is foolish to rely on your advertising firm or graphic artist to protect you from that peril. Before using a photograph or picture, find out who owns the rights to the work. You must then either pay a fee or seek permission to use it. Also, be advised that the photographer as well as the artist may hold the rights to a photograph of an artist's painting. Make sure you gain permission from all appropriate parties.

Advertising is not the only area in which entrepreneurs can run into copyright troubles. Consultants, writers, designers, and manufacturers of products also have to be aware of copyright issues. For example, one could not take an embossed floor tile purchased in a store, hand it to an artist and instruct the artist to make an impression of the tile, reduce it in size, and start cranking them out by the thousands. However, it is permissible to say to the artist, "I like these ornaments made out of porcelain. Let's use porcelain in our designs," or, "These stone carvings pictured in this book are beautiful. Will you make a mold that uses some of the same symbolic elements, with a similar, primitive feel?" If your "taking" is merely "inspired" by the interpretation of an item, then you are not infringing. Copying, however, or in some instances close paraphrasing, is prohibited.

### **C. Trade Secrets**

Trade secret law protects the privacy of commercial businesses by ensuring that secrets are not misappropriated (used by others for personal gain without proper consent). The purpose of trade secret law is to reward the person who created the formula, recipe, and the like, rather than rewarding the person who steals it. Trade secret protection is really the best protection you can get for the product of your intellectual labor, assuming it is possible to economically exploit that idea without disclosing it, because no expiration date exists for trade secret protection. Trade secret laws protect an important area of intellectual property, and protection lasts as long as the information remains secret. Trade secrets can continue into eternity, and can protect processes or products that do not meet patent requirements. For example, the exact formula for Coca-Cola is not patented. It is simply a secret that the company guards very closely.

On the other hand, not all information that is valuable to a company will be

considered a trade secret under state law, and you must protect the secrecy of the information in order to claim trade secret protection. To properly protect your trade secret, you should, at the least, set up careful protective measures, such as employee nondisclosure agreements and document labeling and tracking procedures, and follow them. Also, remember that trade secret doctrine does not protect you against another company's independent creation of the same formula, or recipe, as long as they have not stolen it from you. An independent duplication will not be a violation of trade secrets laws.

Tennessee has adopted the Uniform Trade Secrets Act (UTSA), which governs misappropriations occurring after July 1, 2000.

#### **D. Patents**

A patent gives its holder a monopoly on the use of an invention or ornamental design for a limited period of time and requires a grant of patent by the U.S. Patent and Trademark Office. Like copyrights, patents are creatures of federal law and there are no state patents. The holder of a patent can sell the patent, license it, exploit it directly, or just sit on it until the patent expires—which is usually twenty years from the filing date of the patent application.

A utility patent is the patent type most of us are familiar with. A utility patent extends monopoly protection to inventors of novel, useful, and non-obvious products or processes. Those three adjectives in the last sentence might appear to be self-explanatory, but under patent law these terms have complex meanings. The U.S. Patent and Trademark Office web site is a very good source of information for non-lawyers. You can visit this web site at [www.uspto.gov](http://www.uspto.gov).

Design patents safeguard newly created original and ornamental designs in the manufacturing area. For example, design patents can protect the designs for car bodies and furniture. Design patents expire more quickly after the original filing date than do utility patents.

If you think you have created something patentable or you plan to create something you hope to patent, you will need to do two things. First, go to your library, Small Business Resource Center, preferably one of the technology centers, or bookstore and get your hands on a comprehensive book on patents. Then, if you still think you have a decent shot at meeting the patent requirements, you will need to consult an attorney. Do not waste your money talking to a lawyer until you feel confident that you can make good use of the time and money you will spend to do so. On the other hand, do not make the mistake of thinking that you can navigate these waters on your own. Obtaining a patent is not a do-it-yourself project by any

stretch of the imagination.

If your business accepts ideas from others, it is important to note that you should have a policy in place to assure that submissions your company receives are confidential and will not be disclosed without consent. You should also have all submitters sign appropriately drafted release forms. Conversely, if you send your personal idea to a company you should make sure that the company has a similar confidentiality and disclosure policy in place. Protecting your original idea or the original idea of others should be one of your primary concerns if you engage in idea submission or receipt.

### VIII. DOING BUSINESS IN DIFFERENT STATES OR IN FOREIGN COUNTRIES

The circumstances for each business that operates in states other than Tennessee or countries other than the United States will be different. This Article cannot fully address this issue and has confined its discussion to businesses operated solely in Tennessee. At a minimum, you need to look into the following areas before crossing state or national lines. First, you need to register in the foreign locale. Second, once you begin to do business in that locale, you will need to comply with local laws and regulations, including tax regulations. Also, be aware that when you expand your business into another state or country, you expose yourself to suits in multiple jurisdictions. Further, these days you can cross state and national lines without even knowing it on the Internet. Consult a legal or other appropriate professional for answers to specific questions regarding doing business out of state.

### IX. WHERE CAN I GET HELP?

The resources section that follows will provide you with all the contact information you need to start moving towards your goal of owning a business. Keep in mind that success is up to you. Success is more certain if you educate yourself on the specifics of business start-ups. For example, if you are unfamiliar with concepts like target market, working capital, break-even point, and cash flow, you are going to have to learn to understand and speak the language of the business. Forget long-term success; you probably will not get beyond pitching your concept to sources of debt or equity financing if you do not master these and related matters. Do not despair. You may find that you have some understanding of how businesses work, but you are just unfamiliar with the labels. Even the truly unfamiliar concepts are not that hard to understand once you get access to all the information. Bringing yourself up to speed does take discipline and self-motivation, *but also a willingness to ask for help*. There are many sources available to help you with this task. Most of them do not cost the entrepreneur anything but time and can provide a wealth of information. You do not need to “reinvent the wheel.” Draw on the resources that

are available to you and use the compilations, shortcuts, and other tools that are at your disposal.

Do not get defensive if someone suggests that you do some basic educational groundwork before you move on to the concrete details of starting your own business. The volunteers and professionals who staff the agencies devoted to small businesses are simply trying to help. They want to ensure that you have the best chances to succeed in a competitive market. There are great sources of printed and online information available to you; however, you should also consider the benefits of small group or classroom training. Most people learn more effectively when written input is combined with audible information, and classmates can be a great source of support and honest feedback. Many of the instructors are local business owners with great ties to the informal networks that are so important for entrepreneurs. Also, Business Incubation Centers can be a great resource for new business owners. New entrepreneurs can lease space and use shared resources like fax machines, computers, telephones and more. Appendix A contains contact information for Business Incubation Centers in Tennessee.

**APPENDIX A****RESOURCES****BUSINESS INFORMATION CENTERS****Small Business Development Center****Tennessee State University**

Avon Williams Campus  
330 10th Ave. North, Rm. 314  
Nashville, TN 37203-3401  
(615) 963-7158  
(615) 963-7160 (FAX)

**City of Memphis Renaissance Business Center**

555 Beale St.  
Memphis, TN 38103  
(901) 526-9300  
(901) 525-2357 (FAX)

**DEPARTMENTS OF LABOR****U.S. Department of Labor / OSHA**

In Tennessee  
Green Hills Office Park  
2002 Richard Jones Rd., Ste. C 205  
Nashville, TN 37215-2809  
(615) 781-5423  
(615) 781-5426 (FAX)

**Tennessee Department of Labor**

Occupational Safety and Health Division  
Andrew Johnson Bldg.  
Third Floor  
710 James Robertson Parkway  
Nashville, TN 37243-0659  
(615) 741-2793  
(615) 741-3325 (FAX)

**OTHER GOVERNMENT CONTRACT INFORMATION****Tennessee Department of Economic and Community Development**

312 8th Ave. North  
William R. Snodgrass Tennessee Tower  
11th Floor  
Nashville, TN 37243-0405  
(615) 741-1888  
(615) 741-7306 (FAX)

**University of Tennessee Center for Industrial Services**

193 Polk Ave., Ste. C  
Nashville, TN 37210  
Joe Flynn  
(615) 532-8657  
(888) 763-7439 (Toll Free)  
(615) 532-4937 (FAX)  
E-Mail: [tmep@tennessee.edu](mailto:tmep@tennessee.edu)

**HAZARDOUS WASTE INFORMATION****Division of Solid and Hazardous Waste**

5th Floor, L&C Tower  
410 Church St.  
Nashville, TN 37243-1535  
(615) 532-0780  
(615) 532-0886 (FAX)

**Division of Water Pollution Control**

6th Floor, L&C Annex  
410 Church St.  
Nashville, TN 37243-1534  
(615) 532-0625

**Division of Air Pollution Control**

9th Floor, L&C Annex  
410 Church St.  
Nashville, TN 37243-1531  
(615) 532-0554

**INSURANCE****Independent Insurance Agents & Brokers of America**

127 S. Peyton St.  
Alexandria, VA 22314  
(800) 221-7917  
(703) 683-4422  
(703) 683-7556 (FAX)  
[www.iiaba.net](http://www.iiaba.net)

**Insurance Information Institute**

110 William St. #2400  
New York, NY 10038  
(212) 346-5500  
[www.iii.org](http://www.iii.org)

**INTELLECTUAL PROPERTY****Federal Copyright Office  
Copyright Information Office  
Library of Congress**

101 Independence Ave., SE  
Washington, D.C. 20559-6000  
(202) 707-3000  
[www.copyright.gov](http://www.copyright.gov)

**U.S. Patent and Trademark Office**

600 Dulany St.  
Alexandria, VA 22313  
(800) 786-9199 (general info)  
(703) 308-4357  
[www.uspto.gov](http://www.uspto.gov)

**[www.delphion.com](http://www.delphion.com)**

(free search of US patents and trademarks and descriptions)

**Secretary of State Trademark Office**

312 8th Ave. North, Snodgrass Tower  
6th Floor  
Nashville, TN 37243  
(615) 741-0531

**MICROLOAN DEMONSTRATION PROGRAM - TENNESSEE****Intermediary Lenders****Economic Ventures, Inc.**

P.O. Box 3550

Knoxville, TN 37927

865-594-8762

Service Area: Anderson, Blount, Campbell, Clairborne, Cocke, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, Union, Greene, Hancock, Hawkins, Sullivan, Washington, Johnson, Carter, and Unicoi counties

**LeMoyne-Owen College Community Development Corp.**

802 Walker Ave., Ste. Five

Memphis, TN 38126

(901) 435-1654

(901) 942-6448 (FAX)

Service Area: Shelby County

**South Central Tennessee Development District**

815 S. Main St., P.O. Box 1346

Columbia, TN 38402

(931) 381-2040

(931) 381-2053 (FAX)

[www.sctdd.org](http://www.sctdd.org)

Service Area: Bedford, Coffee, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Perry, and Wayne counties

**Southeast Community Capital**

1020 Commerce Park Dr., Ste. L

Oak Ridge, TN 37830

E-mail: [info@tech2020.org](mailto:info@tech2020.org)

(865) 220-2031

(865) 220-2024 (FAX)

[www.sccapital.org](http://www.sccapital.org)

Service Area: All counties in Tennessee

**Woodbine Community Organization, Inc.**

222 Oriel Ave.

Nashville, TN 37210

(615) 833-9580

(615) 833-9727 (FAX)

E-mail: nashrm@aol.com

Woodbinecommunity.org

Service Area: Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, and Wilson counties

## **OTHER RESOURCES**

### **Secretary of State Uniform Commercial Code (UCC) Office**

312 8th Ave. N.

6th Floor William R Snodgrass Bldg. / Tennessee Tower

Nashville, TN 37243

(615) 741-3276

### **Tennessee Child Care Facilities Corporation**

(Provides assistance in the creation of child care facilities)

44 Vantage Way, Ste. 200

Nashville, TN 37228

(615) 532-0936

(888) 413-2232

(615) 532-9235 (FAX)

E-mail: johnsarnett@state.tn.us

### **Tennessee Department of Economic and Community Development**

312 8th Ave

William R. Snodgrass Bldg / Tennessee Tower

11th Floor

Nashville, TN 37243-0405

(615) 741-1888

(615) 741-7306 (FAX)

www.tnecd.gov

## **SMALL BUSINESS INCUBATION CENTERS**

### **Chattanooga-Hamilton County Business Development Center**

100 Cherokee Blvd.

Chattanooga, TN 37405

(423) 752-4301

(423) 752-1700 (FAX)

### **Cleveland-Bradley County Small Business Development Center**

Cleveland State Community College

Technologies Bldg., Room 126  
3535 Adkisson Drive  
P.O. Box 3750  
Cleveland, TN 37320  
(423) 617-8707  
(423) 478-6251 (FAX)  
E-mail: [rplatz@mail.tsbdc.org](mailto:rplatz@mail.tsbdc.org)

**Four Lake Regional Industrial Development Authority**

P.O. Box 464  
Hartsville, TN 37074  
(615) 374-4607  
(615) 374-4608 (FAX)  
[www.fourlake.org](http://www.fourlake.org)

**Jubilee Project Inc.**

197 North Jockey St.  
P.O. Box 657  
Sneedville, TN 37869  
(423) 733-4195  
(423) 733-1634 (FAX)  
[jubileeproject.holston.org](http://jubileeproject.holston.org)

**Emerge Memphis**

516 Tennessee St.  
Memphis, TN 38103  
(901) 312-700  
(901) 544-7163 (FAX)  
[www.emergememphis.org](http://www.emergememphis.org)

**Nashville Business Incubation Center**

315 Tenth Ave. Nort Ste. A  
Nashville, TN 37203-3401  
(615) 963-7184  
[www.nbiconline.com](http://www.nbiconline.com)

**Oak Ridge Economic Partnership**

1400 Oak Ridge Tpke.  
Oak Ridge, TN 37830  
(865) 483-1321  
(865) 483-1678 (FAX)

**Technology 2020**

1020 Commerce Park Dr.  
Oak Ridge, TN 37830  
(865) 220-2020  
(865) 220-2030 (FAX)  
www.tech2020.org  
E-mail: info@tech2020.org

**TTU BusinessMedia Center's Technology Incubator**

Tennessee Technological University  
P.O. Box 5103  
Cookeville, TN 38505-0001  
(931) 372-6333  
(931) 372-6249 (FAX)  
www.ttubusiness.com

**SCORE OFFICES**

**www.score.org**

**Chattanooga SCORE**

515 Franklin Bldg.  
Eastgate Business Center  
Chattanooga, TN 37411  
(423) 553-1722  
(423) 553-1724 (FAX)  
E-mail: score.cha.tn@comcast.net  
www.scorechattanooga.org

**Greater Knoxville SCORE**

412 N. Cedar Bluff Rd., Ste. 450  
Knoxville, TN 37923  
(865) 692-0716  
E-mail: counseling@scoreknox.org  
www.scoreknox.org

**Jackson SCORE**

West Tennessee Business Resource Center  
c/o Chamber of Commerce  
P.O. Box 1904, 197 Auditorium St.  
Jackson, TN 38302  
(731) 423-2200 (Chamber)

(731) 427-7900 (Score)

**Kingsport SCORE**

c/o Chamber of Commerce  
151 E. Main St.  
Kingsport, TN 37662  
(423) 392-8805  
E-mail: [kptscore@kingsportchamber.org](mailto:kptscore@kingsportchamber.org)  
[www.kingsportchamber.org](http://www.kingsportchamber.org)

**Memphis SCORE**

Clark Tower  
5100 Poplar Ave., Ste. 1701  
Memphis, TN 38137  
(901) 544-3588  
(901) 544-0557 (FAX)  
E-mail: [score@midssouth.rr.com](mailto:score@midssouth.rr.com)  
[www.scorememphis.org](http://www.scorememphis.org)

**Nashville SCORE**

50 Vantage Way, Ste. 201  
Nashville, TN 37228-1500  
(615) 736-7621  
(615) 736-7232 (FAX)  
E-mail: [score@lunaweb.net](mailto:score@lunaweb.net)  
[www.scorenashville.org](http://www.scorenashville.org)

**Northeast Tennessee SCORE**

Amsouth Bank Bldg.  
208 Sunset Drive, Ste. 507  
Johnson City, TN 37604  
(423) 461-8051  
(423) 461-8053 (FAX)  
E-mail: [scoretn@wireco.net](mailto:scoretn@wireco.net)  
[www.scoretn.org](http://www.scoretn.org)

\*\* Call for exact operation hours as days and times vary at different locations.

**SMALL BUSINESS ASSOCIATION**

**United States Small Business Association**

**Tennessee District Office**

[www.sba.gov](http://www.sba.gov)

50 Vantage Way, Ste. 201

Nashville, TN 37228

(615) 736-5881

(615) 736-7232 (FAX)

**TAX INFORMATION****U.S. Internal Revenue Service**

(800) 829-1040

[www.irs.gov](http://www.irs.gov)

**Tennessee Department of Revenue**

Andrew Jackson State Office Bldg.

Third Floor

500 Deaderick St.

Nashville, TN 37242

(800) 342-1003

[www.state.tn.us/revenue/](http://www.state.tn.us/revenue/)

**Franchise, Excise and Income Tax Division**

(615) 741-8999 (Davidson County or out-of-state)

(800) 397-8395

**Sales Tax & Miscellaneous Tax Divisions**

(615) 741-2594 (Davidson County or out-of-state)

**TENNESSEE SMALL BUSINESS DEVELOPMENT CENTER (TSBDC)  
NETWORK**

[www.tsbdc.org](http://www.tsbdc.org)

**Tennessee Small Business Development Center**

Office of the State Director – Lead Center

Middle Tennessee State University

P.O. Box 98

Murfreesboro, TN 37132

(615) 849-9999

(615) 898-3900 (FAX)

**Austin Peay State University**

P.O. Box 4775  
106 Public Square  
Clarksville, TN 3704437040  
(931) 221-1370  
(931) 221-7748 (FAX)

**Chattanooga State Technical Community College**

100 Cherokee Blvd., Ste. 202  
Chattanooga, TN 37405-0880  
(423) 756-8668  
(423) 756-6195 (FAX)

**Cleveland State Community College**

P.O. Box 3570  
3535 Adkisson Dr.  
Cleveland, TN 37320-3570  
(423) 478-6247  
(423) 478-6251 (FAX)

**Dyersburg State Community College**

1510 Lake Rd.  
Glover Bldg., Room 204  
Dyersburg, TN 38024-24502466  
(901731) 286-3201  
(901731) 286-3271 (FAX)

**East Tennessee State University (ETSU)**

**College of Business**

P.O. Box 70698  
2109 West Market Street  
Johnson City, TN 37614-0698  
(423) 929-5630439-8505  
(423) 461-7080439-8506 (FAX)

**Jackson State Community College**

2046 North Parkway St.  
197 Auditorium St.  
Jackson, TN 38301-37976866  
(901731) 424-5389  
(901) 425-2647 (FAX)  
  
(731) 427-3942 (FAX)

**Middle Tennessee State University (MTSU)**

Rutherford County Chamber of Commerce Bldg.  
501 Memorial Blvd.  
Murfreesboro, TN 37129-0001  
(615) 898-2745  
(615) 893-7089 (FAX)

**MTSU Affiliate Office at Columbia**

Maury County Chamber of Congress Building  
106 West 6th St.  
Columbia, TN 38402-8069  
(615) 898-2745  
(615) 893-7089 (FAX)

**Pellissippi State Technical Community College (PSTCC)**

Knoxville Historic City Hall  
601 West Summit Hill Dr.  
Knoxville, TN 37902-2011  
(865) 632-2980  
(865) 971-4439 (FAX)

**Southeast Tennessee Development District**

25 Cherokee Blvd.  
P.O. Box 4757  
Chattanooga, TN 37405-4757  
(423) 266-5781  
(423) 267-7705 (FAX)

**Tennessee State University (TSU)****College of Business**

330 10th Ave. North  
Fourth Floor  
Nashville, TN 37203-3401  
(615) 963-7179  
(615) 963-7160 (FAX)

**Tennessee Technological University (TTU)****College of Business Administration**

Johnson Hall, Room 407C  
115 N. Peachtree  
P.O. Box 80695023

Cookeville, TN 38505 -0001  
(931) 372-36483670  
(931) 372-62496534 (FAX)

**Four Lakes Regional Industrial Development Authority**

P.O. Box 63  
Hartsville, TN 37074-0063  
(615) 374-35214607  
(615) 374-4608 (FAX)

**The University of Memphis**

320 South Dudley St.  
Memphis, TN 38104-3206  
(901) 527-1041  
(901) 527-1047 (FAX)

**TSBDC SPECIALTY CENTERS**

**International Trade Center**

University of Memphis  
976 W. Park Loop, Rm. 104  
Memphis, TN 38152-4110  
(901) 678-4174  
(901) 678-4833 (FAX)

**International Trade Center  
Affiliate Office at Knoxville**

17 Market Square #201  
601 W. Summit Hill Dr.  
Knoxville, TN 37902-14052011  
(865) 246-2624632-2990  
(865) 521-6367 (FAX)  
E-mail: itc-knoxville@kacp.com  
(901) 678-4833 (FAX)  
E-mail: rjenkins@mail.tsbdc.org

**International Trade Center  
Affiliate Office at Nashville**

211 Commerce St., Ste. 100  
312 8<sup>th</sup> Ave. N.  
Tenth Floor  
Nashville, TN 37201-180137243

(615) 743-3058418-8384  
(615) 259-6099736-2226 (FAX)  
E-mail: pspence@mail.tsbdc.org

**Tennessee Energy Institute**  
**The University of Memphis**  
500 Winchester Blvd., Room 108  
Collierville, TN 38017  
(901) 678-4618  
(901) 678-5214 (FAX)

### **WOMEN AND MINORITY RESOURCE CENTERS**

**National Minority Business Center**  
223 8th Ave. N. Ste. 205  
Nashville, TN 37203-3513  
(615) 255-0432

**Purchasing Division for State of Tennessee**  
Small Minority Business Coordinator  
Governor's Office of Diversity Business Enterprise  
Tammy White  
(615) 741-4592253-4657

**SBA Office of Women's Business Ownership**  
(202) 205-6673

**Tennessee Department of Economic and Community Development**  
312 8th Ave. N.  
11th Floor  
Nashville, TN 37243-0405  
(615) 741-1888  
(615) 741-7306 (FAX)

**United States Small Business Administration**  
Tennessee District Office  
Jacqueline Merritt  
Women's Business Ownership Representative  
50 Vantage Way, Ste. 201  
Nashville, TN 37228  
(615) 736-5881

(615) 736-7232 (FAX)

**Women's Resource Center, Inc.**

1112 8th Ave. S.  
Nashville, TN 37203  
(615) 248-3474

**WEB SITES**

**American Marketing Association (AMA)**

[www.marketingpower.com](http://www.marketingpower.com)

**Association of Small Business Development Centers (ASBDC)**

[www.asbdc-us.org](http://www.asbdc-us.org)

**Better Business Bureau (BBB)**

[www.bbb.com](http://www.bbb.com)

**Business Plan templates and samples**

[www.bplans.com](http://www.bplans.com)

**Equal Employment Opportunity Commission (EEOC)**

[www.eeoc.gov](http://www.eeoc.gov)

**Federal Trade Commission (FTC)**

[www.ftc.gov](http://www.ftc.gov)

**International Franchise Association (IFA)**

[www.franchise.org](http://www.franchise.org)

**Internal Revenue Service (IRS)**

[www.irs.gov](http://www.irs.gov)

**IRS Small Business Information**

[www.irs.gov/smallbiz](http://www.irs.gov/smallbiz)

**Minority Business Development Agency (MBDA)**

[www.mbda.gov](http://www.mbda.gov)

**National Association of Women Business Owners (NAWBO)**

[www.nawbo.org](http://www.nawbo.org)

**National Association of State Work Force Agencies**

[www.icesa.org/index.cfm](http://www.icesa.org/index.cfm)

**Center for Women's Business Research**

[www.nfwbo.org](http://www.nfwbo.org)

**National Labor Relations Board (NLRB)**

[www.nlr.gov](http://www.nlr.gov)

**Nonprofit Resource Center**

[www.not-for-profit.org](http://www.not-for-profit.org)

**SBA Office of Women's Business Ownership**

[www.sba.gov/womeninbusiness/](http://www.sba.gov/womeninbusiness/)

**SCORE**

[www.score.org](http://www.score.org)

**Small Business Administration (SBA)**

[www.sba.gov](http://www.sba.gov)

**State of Tennessee Department of Economic and Community Development**

[www.http://state.tn.us/e.cd](http://www.state.tn.us/e.cd)

**Social Security Administration (SSA)**

[www.ssa.gov](http://www.ssa.gov)

**Tennessee Anytime website (contains information for the Tennessee Business Owner)**

[www.tennesseeanytime.org](http://www.tennesseeanytime.org)

**Tennessee Department of Commerce and Insurance**

[www.state.tn.us/commerce](http://www.state.tn.us/commerce)

**Tennessee Department of Labor and Workforce Development**

[www.state.tn.us/labor-wfd](http://www.state.tn.us/labor-wfd)

**Tennessee Department of Revenue**

[www.state.tn.us/revenue](http://www.state.tn.us/revenue)

**Tennessee Secretary of State**

[www.state.tn.us/sos](http://www.state.tn.us/sos)

**Tennessee Small Business Development Center (TSBDC)**

[www.tsbdc.org](http://www.tsbdc.org)

**Trademark Center**

[www.tmcenter.com](http://www.tmcenter.com)

**U.S. Department of Commerce (DoC)**

[www.commerce.gov](http://www.commerce.gov)

**Women Biz**

[www.womenbiz.gov](http://www.womenbiz.gov)

**World Chamber of Commerce Directory**

[www.chambersofcommerce.org](http://www.chambersofcommerce.org)

## APPENDIX B

### BASIC BUSINESS PLAN

A proper business plan is essential to the success of your new business, as previously discussed in Section III of this Article. The TSBDCs, SCORE, and other resources can assist you preparing in this important document. The sample plan that follows should help you understand the components of a simple business plan. However, there is no substitute for tailoring your business plan to fit your business or for using available resources, some of which are listed in Appendix A.

Most business plans are organized similarly to the sample business plan located below. Keep in mind that the footnotes are not part of a business plan. Footnotes have been inserted in this example to explain key points about each section.

#### SAMPLE BASIC BUSINESS PLAN<sup>1</sup>

##### *The Renaissance Child*<sup>2</sup>

#### I. THE BUSINESS<sup>3</sup>

The Renaissance Child is an innovative approach to childcare. By offering quality care, as well as educational, cultural, and enrichment activities on-site, The Renaissance Child saves professional parents time, alleviates scheduling conflicts, and allows working parents to spend more quality time with their children. The Renaissance Child has limited enrollment, an upscale atmosphere, and also provides a fun, innovative, and educational experience for every student.

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<sup>1</sup> This Sample Business Plan is included to demonstrate what your business plan might look like when completed. Your actual business plan may be more complex or include other sections, as discussed in Part III of this Article.

<sup>2</sup> The Business Plan should be titled as a business plan and should include the name of the business.

<sup>3</sup> The “Business” section serves as an introduction to your business plan. You should include your business name and succinctly explain your business idea. See sections III(B)(2) and II(A).

## II. THE OWNERS<sup>4</sup>

The Renaissance Child is a formed partnership between Michelle Hargis and Mary Odell. Mary Odell will own 60% of the company, and Michelle Hargis will own the remaining 40%. Michelle Hargis will be responsible for all aspects of the business side of The Renaissance Child, acting as business manager. Mary Odell will be the director of The Renaissance Child and will be in charge of development, programming, staffing, and other childcare and extracurricular activity related issues.

## III. ABOUT THE BUSINESS<sup>5</sup>

### A. Type Of Business<sup>6</sup>

The Renaissance Child provides upscale childcare for children ages 3 through 12. The Renaissance Child targets the children of busy professionals who need to simplify their lifestyles by combining childcare and extracurricular activities into one schedule at one location. The extracurricular activities offered will be cultural, educational, and artistic in nature and will include: foreign language instruction, art and music lessons, tutorial assistance in various subjects, dance classes, swimming lessons, gymnastics training, and various athletics programs.

### B. Objectives of The Business<sup>7</sup>

1. To provide professional parents quality childcare combined with optional extracurricular activities all in one location.
2. To provide children with activities (athletic, cultural and educational) that provide

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<sup>4</sup> In the "Owners" section, you should explain who owns the business and what percentage of the business each person owns. Consult Part V of this Article regarding structuring your business as an entity and roles of investors.

<sup>5</sup> In this section, you should expand upon your business idea. The Sample Business Plan uses subsections to clearly define key concepts and explain its service business. Depending on the type of business you have selected, your business plan sections may be set up differently in this area.

<sup>6</sup> The "Type of Business" section is arguably the most important section of your business plan. In this section you should thoroughly, yet concisely, explain your business to the reader. The subsequent sections in Part III of your business plan should build upon your explanation here.

<sup>7</sup> "Objectives" are simply what you and your business want to accomplish in the coming months and years. As more thoroughly discussed in Section III of this Article, setting goals for your business is an important part of the start-up process.

lifetime skills, knowledge, and enjoyment instead of just a babysitting service.

3. To achieve full enrollment capacity by the eighth month of operation.
4. To successfully franchise the business by the end of its sixth year of operation.

### **C. History<sup>8</sup>**

The business is not yet open; therefore it has no history. However, Mary Odell and Michelle Hargis possess education and work experience that provide the framework for a successful business endeavor. Mary Odell has twenty-eight years of experience in education. She has a Masters Degree in Administration and Supervision and a Bachelor of Science degree with an early childhood education focus. Mary Odell has taught grades K-6 for the last twenty-eight years. She has served as team leader at her present elementary school, handling all the programming for the entire grade, and has also worked with gifted children, the Odyssey of the Mind program, and sponsored various student organizations. Ms. Odell has received several teaching and leadership awards throughout her career, which has taken her to Florida, California, Texas, Georgia, and Tennessee. Ms. Odell has also owned a previous business for which she successfully handled all staffing and scheduling matters.

Michelle Hargis has a Bachelor of Science Degree and a Doctorate of Jurisprudence. She previously owned a dance studio, catering to students ages 3-16. Her business expanded from four students to over 100 after only two years in operation—a remarkable number, considering that this business was located in a rural area with an average income of twenty-two thousand dollars (\$22,000) per family. Throughout college, Ms. Hargis focused on business management and continued her studies, completing her J.D. degree at The University of Tennessee College of Law.

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<sup>8</sup> If your business is a start-up (as *The Renaissance Child* is in the Sample Business Plan), your business will have no history to discuss in this section. Instead, you should propound the skills, knowledge and experience that the key players within the business possess. You should use this section to build confidence in your abilities to succeed at this new business endeavor. If you are purchasing an existing business or franchise, you may want to briefly explain the history of that business or franchise and how you, with your specialized skills and knowledge, will continue and expand upon previous accomplishments.

### **D. Operational Hours / Office Hours<sup>9</sup>**

The Renaissance Child will be open from 5:30 A.M. until 6:30 P.M., Monday through Saturday. The early and late hours will allow parents who commute to Nashville (and surrounding areas) and parents who have early and/or late shifts to drop off their children on the way to work and pick them up after work. Extended hours will be provided for the benefit of the professional parent if the Director determines they are necessary. The Renaissance Child will be closed on Sunday. On school holidays, The Renaissance Child generally will be open and will provide enrichment activities as a service to parents and students. The Renaissance Child will be closed on Thanksgiving, Christmas, and New Year's Day. The center will be open on snow days, at the Director's discretion, and such openings will be announced via radio, television, e-mail, and recorded message on the center's telephone line. Additionally, special programs and camps will be held during the summer months to supplement income. These programs and camps will be held at varying times thereby allowing maximum participation.

### **E. Economic / Accounting<sup>10</sup>**

The Renaissance Child will generate revenue from the weekly account of the childcare center. All extra enrichment classes will be optional for the parent, at an additional charge. These optional extracurricular activities will also provide revenues for the center. Parents will be assessed a weekly fee for each child in attendance at the childcare center. The weekly fee will be paid even if the child is absent. Each extracurricular activity fee will be assessed monthly. Children who are enrolled in extracurricular activities will do so on a semester basis. The extracurricular fees will be paid even if the child is absent. A registration fee of \$40.00, technology fee of \$15.00, and insurance fee of \$5.00 will be assessed at the beginning of each semester.

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<sup>9</sup> These hours will not be set in stone simply because you include them in your business plan. However, choose operational hours wisely and explain your choices in this section. Your entire business plan should reflect that you have thought this business idea through and you have ironed out the details. Success comes with planning!

<sup>10</sup> Generally, some new business owners have difficulty completing the "Economic/Accounting" section. Part IV(B) of this Article should help you with this task. However, do not be afraid to enlist the help of a your local small business center or other professionals if necessary. The "Economic/Accounting" section simply explains how your business will make money and how it will manage that money. Your financial statements (discussed in Part IV of this Article) and samples located in Appendix C should help you. You should explain the accounting system you have chosen. Depending upon the type of business you will be operating, you will also need to explain gross margin or expense per hour of service. Remember that the Sample Business Plan is a service business with no inventory. Your business plan may be more complicated in this section than the example.

Students continuing with the center will pay the registration fee only once. The center will be approved for 99 students: (10) three year olds, (15) four year olds, (40) five year olds, and (34) six to twelve year old children.

The center's financial statements, attached hereto, reflect an 85% enrollment capacity during its first year in business. This figure was determined using industry averages of first year childcare businesses. The availability of childcare centers is less than adequate for this district. Therefore, the center will be at maximum capacity very soon after its completion and, accordingly, the financial statements reflect this in that they are based on a 99% enrollment capacity for Year Two and Year Three. The Renaissance Child will use an accrual based accounting system.

#### **F. Inventory/Equipment<sup>11</sup>**

The Renaissance Child will maintain no inventory for resale. However, it will maintain an inventory of supplies that will be consumed by the students such as crayons, paper, glue, paint, etc. The inventory level of these items will remain at approximately three-hundred dollars (\$300).

To provide the best possible services to our clients, The Renaissance Child must maintain the following equipment:

##### **Furniture:**

Tables, chairs and rockers, open shelves for play equipment, screens to divide activity areas, cots and nap pads, lockers for children's personal item storage;

##### **Play Equipment and Materials:**

Educational video games and machines, television sets, videocassette recorders, videotapes, record/cassette/compact disc players, computers, printers, toy kitchen centers, gymnastic mats, clay, art easels, blocks, dolls, other toys and games, aquariums, puzzles, sand box, tri-cycles, etc;

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<sup>11</sup> The "Inventory/Equipment" section should include a thorough list of needed inventory. This may include inventory for resale and/or supplies and equipment for internal use. The inclusion of inventory categories by dollar amount or by percentage of total inventory may be a good idea for some types of businesses. If you own a retail business, you will want to include average inventory turn for retail stores similar to yours and include your projected first year sales, as well as your average inventory level. If you have already established accounts with vendors, that information should be included here.

**Office Equipment:**

Fax machine, computer and printer, copy machine, transportation vans;

**Equipment to include:**

Swings, slide, jungle gym, basketball court and concrete slab for hopscotch, ball bouncing, etc., and an indoor gymnasium that will also serve as the auditorium. The center will include a swimming pool.

**G. Legal<sup>12</sup>**

The Renaissance Child will be formed as a partnership between Mary Odell (60%) and Michelle Hargis (40%), and responsibility for profitable operations will be divided equally. Each owner will be in charge of different business areas. Mary Odell will serve as Director of The Renaissance Child and Michelle Hargis will serve as Business Manager.

**H. Future Plans<sup>13</sup>**

As stated earlier, The Renaissance Child will fill a niche created in the childcare industry by catering to busy working parents. We will develop the first center, adding others in carefully selected and researched areas. Upon success of these businesses, the Renaissance Child will begin franchising by the end of the sixth year.

**IV. MARKET ANALYSIS<sup>14</sup>**

The Renaissance Child will target professional working parents with annual household incomes of \$50,000 and above who live in the south and east sections of Clarksville-Montgomery County. A parent who is part of the target market will have

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<sup>12</sup> As more thoroughly discussed in Part V of this Article, you must choose a business entity (the legal form of your business). You should also list who will be responsible for each aspect of the business.

<sup>13</sup> The "Future Plans" section should concretely state what your business will become. This section is not a repetition of the "Objectives" section. The "Future Plans" section is a road map to your ultimate long-term "vision" for the business. The "Objectives" section generally is what you want the business to accomplish in the mean time.

<sup>14</sup> The "Market Analysis" section of your business plan should discuss what types of customers you will sell to and where these customers are located.

children who are zoned to attend one of the following schools: Barksdale Elementary, Sango Elementary, St. Bethlehem Elementary, East Montgomery Elementary, Glenellen Elementary, Northeast Elementary, Richview Middle School, and Rossvie Elementary School. The Renaissance Child will provide bus service to the center for after-school students.

Presently, the southeast Clarksville-Montgomery County area is not provided with an adequate number of childcare facilities. Glenellen Elementary will be opening in the Fall of 1999. New zoning boundaries put one-thousand new five to twelve year olds in this southeast area.

## **V. PRODUCT / SERVICE MIX AND COMPETITION**

### **A. Products/Services<sup>15</sup>**

The Renaissance Child will provide quality childcare and save valuable time for the professional parent. A listing of services follows:

- (1) Age appropriate educational programming;
- (2) Extracurricular activities on-site including: music, dance, karate, swimming, art, and drama lessons;
- (3) Team sport practices available on-site (we will encourage recreational league coaches to utilize our pristine athletic fields for practices);
- (4) Tutoring, help with homework, foreign language classes available;
- (5) Computer lab and instruction;
- (6) Saturday service and select holiday service; and
- (7) Parent and public programs.

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<sup>15</sup> You should discuss the products and services available to your customers in this section.

## **B. Comparison to Competitors' Products & Services<sup>16</sup>**

Presently, there are six daycare centers servicing the southeast area of Clarksville-Montgomery County. All six of these daycare centers have waiting lists. Additionally, none of the other daycare centers offer parents the convenience of on-site extracurricular activities. The Renaissance Child will differentiate itself from the other childcare centers by offering numerous extracurricular activities so that when a parent picks his/her child up from the center, both of their days are over. There will be no shuffling to get the child to dance class or soccer practice on time. All lessons and practices will be over, thereby giving the parent and the child the rest of the evening to spend quality time together rather than driving all over town for various enrichment activities.

The other daycare centers do offer swimming lessons for summer students, but the parent must buy pool passes for each child enrolled. Otherwise, no extracurricular activities are offered on-site at competing centers.

The center will also offer special programs throughout the year for parents and children alike. The programs will be individually tailored to the needs of the clientele. Parent programs will be free. No other center offers any of these services.

## **VI. MARKETING STRATEGY<sup>17</sup>**

### **A. Promotion Strategy<sup>18</sup>**

The Renaissance Child will be promoted vigorously. During the first year of operations, twelve thousand dollars (\$12,000) has been budgeted for promotional activities. Promotion for the center will start as soon as construction on the building facility begins. We will erect a sign on the property announcing the arrival of a state of the art childcare/activity center in the Clarksville area as soon as the site is cleared and the footing is poured. One thousand dollars (\$1,000) of the twelve thousand dollars (\$12,000) budgeted for advertising has been designated for this purpose. To

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<sup>16</sup> In this section, discuss the industry participants and what separates you from the competition, as more thoroughly discussed in Section III(C) of this Article.

<sup>17</sup> In the "Marketing Strategy" section you will discuss how your business will break into its target market.

<sup>18</sup> This section deals with advertising—getting your name out in front of the public. While the Sample Business plan lists billboards and newspaper ads, you may be planning direct mailings, cold calling, or car flyers.

build anticipation, we will utilize billboards in high-traffic areas and purchase newspaper ads periodically during construction. Two thousand dollars (\$2,000) has been budgeted for billboard rental. Two thousand (\$2,000) has been budgeted for newspaper advertisements. One thousand dollars (\$1,000) has been budgeted for printed flyers that will be passed out at schools in the center's service area, pending approval by the Director of Communications for the Clarksville-Montgomery County School System.

We will begin accepting appointments for enrollment four months prior to completion. After the center is built and furnished, an open house for parents and the community will be held. Three thousand dollars (\$3,000) has been budgeted for open house catering and decorations. The activity staff will also present public programs at the center in their respective fields during grand opening week. The Renaissance Child will advertise public events in the local newspaper and on local radio stations (included in advertisement budget above). Public programs will bring people into our center and keep our name in front of the public. By "romancing" the community, we will show that The Renaissance Child is a new type of childcare center with programs and objectives that separate us from the "daycares" in the Clarksville area.

### **B. Pricing Policy<sup>19</sup>**

Standard industry pricing for childcare in the southeast area of Clarksville is between \$15.00 and \$17.00 per day. Fees are paid weekly, in advance. The Renaissance Child will charge \$90.00 per week (\$18.00 day) for preschool students. This fee will include biweekly computer instruction for all ages. In the southeast Clarksville-Montgomery County area, the after-school program average rate is \$35.00 per week. The Renaissance Child will charge \$40.00 per week for this service. All extracurricular activities and tutoring for all age groups can be scheduled for an additional charge.

### **C. Sales Strategy<sup>20</sup>**

Each prospective client will schedule enrollment appointments with the center. At enrollment appointments, prospective clients will meet with the Business

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<sup>19</sup> Pricing is an integral part of marketing. Therefore, you should include a "Pricing Policy" section either: (1) explaining mark-up for retail business or (2) how pricing was determined for service businesses.

<sup>20</sup> How will you sell your business to the target market, generate profits, and become a success? Use this business plan section to layout your sales strategy.

Manager, Michelle Hargis, and the Director of the center, Mary Odell. The client will first meet with the Director. Together, the prospective client and the Director will complete the child's profile sheet, including his interests and what the parents expect from our center. The Director will then explain the goals of the center and why it is what the client needs, as well as why it is the best thing for this particular child. The Director will then take the prospective client on a personally guided tour of the facility and explain what The Renaissance Child has to offer the client while on the tour. The Director will discuss programming and available extracurricular activities. She will tailor the presentation for each client by using the information on the profile sheet. For example, she will refer to client's child by name when discussing activities that are listed on the profile sheet as interests of the child. Additionally, after the center has opened, clients will be able to watch classes/activities in select rooms that have one-way mirrors. Upon overcoming any objections, the Director will then take the client to the Business Manager's office.

The Business Manager will greet the prospective clients by name and will thank them for coming to the center. She will be very personable. The Business Manager, Director, and parents will plan the child's programming and choose extracurricular activities. The Business Manager will explain financial obligations, including billing and payment options. The Business Manager will then close the sale.

Thank you cards will be sent immediately, signed by the Director and the Business Manager. A short welcome note from the child's teachers will be sent to the child and parents the week before the child begins his education at the center.

## **VII. MANAGEMENT PLAN**

### **A. Form of Business Organization<sup>21</sup>**

The Renaissance Child is a formed partnership between Michelle Hargis and Mary Odell. Mary Odell will own 60% of the company and Michelle Hargis will own the remaining 40%. Mary Odell will be the Director of The Renaissance Child. Michelle Hargis will be the Business Manager.

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<sup>21</sup> This section is basically a review of organizational structure and ownership.

### **B Advisory Board<sup>22</sup>**

The Renaissance Child is fortunate to have an exceptional support board of skilled professionals. All of our insurance needs will be handled by Mahan Insurance Company, which specializes in childcare centers. Our banking needs will be handled by Tennessee's Number One Bank. The President of Tennessee's Number One Bank, Justin Louis, has acted in a financial advisement capacity for the business since its inception and will continue to do so. The Renaissance Child will use Tanya Tyson as its personal C.P.A. and her firm, Tanya Tyson Bookkeeping, for all bookkeeping needs. Megan Palmer of The Law Firm of Bullock, Palmer, Caudill and Warren will be retained as counsel as needed in employment issues, worker's compensation, and other liability concerns.

### **C. Staffing Plan<sup>23</sup>**

The Renaissance Child will be professionally overseen by a Business Manger and by a Director who is in charge of all programming and human resource matters. Under the Director, there are five full-time employees who work a forty hour week as classroom teachers; four part-time employees who work five hours a day assisting and supervising nap, snack, and playtime; one cook who plans daily menus in accordance with state guidelines, to be approved by the Director; a retired nurse will work two hours per day plus periodically visit to check for lice and other infectious diseases and to educate children about healthy practices. Additionally, an Assistant Director will be hired after three months but before six months of operation, enabling the Director to work more closely with staff and students. The Assistant Director will be hired after the grand opening because the Director will need time to establish the exact needs the Assistant Director position will fill, which cannot be determined until registration is complete. The Renaissance Child will also employ a receptionist/secretary/greeter (one job) who will report to the business manager for instructions. The Director, Assistant Director, and Business Manager will rotate bus driving responsibilities for after-school student pickup.

## **VII. CONCLUSION**

The Renaissance Child is an innovative concept—combining childcare and enrichment activities for the convenience of working parents and their children.

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<sup>22</sup> The Advisory Board consists of any professionals from which you will utilize services, knowledge, or skills.

<sup>23</sup> The "Staffing Plan" section should list employees, job descriptions, and rate of pay. Depending on the size of your business, you may need to include an organizational chart.

Clarksville-Montgomery County is underserved by childcare facilities in the Renaissance Child's target area. Further, the consumers that make up the target market in this area are financially able to support such a childcare facility. The Renaissance Child is owned and managed by Mary Odell and Michelle Hargis, each with the experience, knowledge, and education to succeed in their respective management and ownership positions.

## APPENDIX C

*The Renaissance Child*  
**Balance Sheet**  
**Three Year Period**

	<u>Start-Up</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>ASSETS:</b>				
<u>Current Assets:</u>				
Cash and Equivalents	\$25,000	\$27,567	\$90,201	\$154,190
Accounts Receivables	0	450	450	450
Inventory	300	300	300	300
<b>TOTAL CURRENT ASSETS:</b>	25,300	28,317	90,951	154,940
<u>Fixed Assets:</u>				
Equipment with/ 0 residual value	112,000	112,000	89,600	66,800
Less Depreciation -5 yr	0	22,400	22,800	24,000
	112,000	89,600	66,800	42,800
Vans (3) w/ 3000 residual value	66,000	63,000	49,800	36,600
Less Depreciation -5 yr	0	13,200	13,200	13,200
	66,000	49,800	36,600	23,400
Building w/ 20,000 residual value	320,000	300,000	285,000	270,000
Less Depreciation -20 yr	0	15,000	15,000	15,000
	320,000	285,000	270,000	255,000
<b>TOTAL FIXED ASSETS:</b>	498,000	424,400	373,400	321,200
<b>TOTAL ASSETS</b>	523,300	452,727	464,351	476,140

**LIABILITIES:**Current Liabilities:

Accounts Payable	0	0	0	0
Taxes Payable	0	14,089	14,089	14,089
Current Portion L.T.D.	24,813	27,233	29,787	32,581

**TOTAL CURRENT  
LIABILITIES:**

24,813	27,233	29,787	32,581
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Long Term Liabilities:

Notes Payable	385,000	360,187	332,954	303,167
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**TOTAL LONG  
TERM LIABILITIES:**

385,000	360,187	332,954	303,167
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<b>TOTAL LIABILITIES:</b>	409,813	387,420	362,741	335,748
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<b>OWNER'S EQUITY:</b>	113,487	65,297	101,610	140,392
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<b>LIABILITIES PLUS EQUITY:</b>	\$523,300	\$452,717	\$464,351	\$476,140
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***The Renaissance Child***  
**Balance Sheet \*\***  
**Three Year Period**

	Year 1	% Sales	Year 2	% Sales	Year 3	% Sales
<b>SALES:</b>						
Childcare Revenues	\$318,682	\$98	\$374,920	\$98	\$374,920	\$98
Extracurricular Revenues	5,040	2	5,940	2	5,940	2
Cost of Sales:	0					
<u>Total Cost of Sales:</u>	0					
<b>Gross Profit:</b>	323,722		380,860		380,860	
<b><u>OPERATING EXPENSES:</u></b>						
Advertising	12,000	2	1,200	3	12,000	3
Insurance	30,000	9	30,000	8	30,000	8
Building Depreciation	15,000	5	15,000	4	15,000	4
Equipment Depreciation	22,400	7	22,800	6	24,000	6
Utilities	7,800	2	7,800	2	7,800	2
Accounting/Legal	3,000	<1	3,000	<1	3,000	<1
Licenses/Fees	640	<1	480	<1	480	<1
Operating Supplies	1,200	<1	1,200	<1	1,200	<1
Van Depreciation	13,200	4	13,200	3	13,200	3
Repairs/Maintenance	320	<1	320	<1	320	<1
Travel	200	<1	200	<1	200	<1
Interest	33,736	10	31,317	8	28,762	8
Bank Service Charges	180	<1	180	<1	180	<1
Dues and Publications	120	<1	120	<1	120	<1
Payroll	129,750	40	129,750	34	129,750	34
Payroll Taxes	14,089	4	14,089	4	14,089	4
Offices Expenses	520	<1	520	<1	520	<1

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\*\* Note: On a typical start-up business income statement, Year 1 generally is broken down by month.

<b>Total Operating Expenses</b>	284,155	99	281,976	84	280,621	83
<b>NET PROFIT:</b>	\$39,567		\$98,884		\$100,239	