

Getting Ready to Start a Business (MA)

A Legal Guide for

Massachusetts Startups

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Notice

Getting Ready to Start a Business: A Legal Guide for Massachusetts Startups is a courtesy publication provided for educational purposes. It is not a legal document nor is it intended to serve as legal advice or a legal opinion.

Bernstein Shur makes no representations that this is a complete or final description or procedure that would ensure legal compliance and does not intend that the reader should rely on it as such.

Getting Started



Congratulations on your decision to start a business in Massachusetts! This is an exciting time for you and we are pleased to be able to offer you some guidance as you get ready to take your first steps.

There will be a lot that you need to learn as you begin your new business and we hope that you find this booklet to be a useful tool in getting organized and ready to launch.

As you read through the chapters, keep in mind that this booklet is intended to provide an overview of some common legal issues and questions that entrepreneurs encounter when starting a business in Massachusetts. It is not a detailed summary of each area of law regulating businesses in Massachusetts nor has the content been tailored to address specific areas of industry or practices.

Additional areas of law may apply to your business if you are a licensed professional or if your business is subject to federal or state regulation.

For that reason, it is generally a good idea to speak with business advisors (attorneys, accountants, small business counselors, etc.) to answer specific questions that pertain to you and your business before you get started. At the end of this booklet, we have included some additional resources that might be useful as well.

We'd like to be among the first to welcome you to the Massachusetts business community! We wish you every success in your new venture.

Protecting Your Idea



Most entrepreneurs start their business with some idea of bringing a new product or service to the market or providing an existing product or service to customers in a new or exciting way. Because this idea is the foundation of your business venture, you'll want to make sure that you are taking proper steps to protect it.

Creations or ideas of the human mind that are given legal property rights are known as “intellectual property”. Intellectual property can be protected in four main ways: Patent law, copyright law, trademark law and trade secret law.

Patent Law

A patent is a grant by the federal government of the right of an inventor to exclude others from making, using or selling an invention. Patents do not protect “ideas” – only the technological methods and processes of the idea as incorporated into an invention. In order to receive a patent, an invention must meet two key tests of being both “novel” and “nonobvious”. An invention is “novel” if it is not identical to prior or existing inventions. An invention is “nonobvious” if it is not an obvious improvement on prior or existing inventions. In other words, there needs to be an inventive step between existing technology and the new invention such that a person of ordinary skill would not come up with that new invention.

The term for a patent in the U.S. is 20 years from the application filing date. Once the patent expires, the invention goes into the public domain and is free for anyone to use. An inventor may be barred from receiving a patent if the invention is publicly available, either by being described in a printed publication or offered for sale, for more than one year before the patent application is filed. For this reason, inventors must be careful in disclosing their invention to others before a patent application is submitted to the **U.S. Patent & Trademark Office (USPTO)**.

Protecting Your Idea



In the case of competing inventions, patent priority is given to the inventor who can establish that he was the first to actually invent, not to the first person who files a patent application. Therefore, keeping notes or otherwise tracking the development of an invention can be very important.

Applying for a patent is generally a slow and expensive process. Once filed, it can take several years for a patent application to go through the examination process and mature into a registered patent. Under current U.S. law, an inventor may file a provisional patent application or a full patent application. A provisional application includes a description of the invention and may include drawings but does not include formal patent claims or the required disclosure information for full examination by the USPTO.

For that reason, a provisional application cannot mature into a registered patent and expires after one year if a full patent application is not filed by the inventor. The benefit of the provisional patent is that it gives the inventor the earliest possible application date for protecting the inventor's rights while also giving him or her up to one year to develop all the necessary information for a full application.

Copyright Law

A copyright is a federal right owned by every author of a creative work to exclude others from doing any of the following five activities:

- 1 **Reproduction**
- 2 **Adaptation**
- 3 **Distribution to the public**
- 4 **Performance in public**
- 5 **Display in public**



Interested in Learning More?

For the full book, email Kristin at kmendoza@bernsteinshur.com and she'll be happy to connect with you and provide you with the full resource!

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With almost 20 years in practice, Kristin has always had a passion for working with tech startups and business owners. With her familiarity with the industry—from attending law school in San Francisco specifically so she could be near Silicon Valley during the Dot Com boom, to working with software engineers—Kristin has the insight to break down transactions and legal issues into smaller modules, steps and action plans more easily understood by non-lawyers. She then takes this approach to guide clients through private offerings, acquisitions and various other complex transactions throughout the business life-cycle.

Kristin knows the challenges of starting and operating new businesses. After 14 years in corporate law, she made the leap to start her own firm where she operated a boutique business law practice for startups and small businesses while developing an innovative new business model and client fee structure. As a small business owner, she's lived the experience, and can advise entrepreneurs throughout the process with thoughtful, seasoned counsel and put them on the path to success.