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MAKING SERVICE A MATTER OF PRACTICE SINCE 1835



STARTING A BUSINESS

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INTRODUCTION

The following notes are intended to help you plan your business. They are provided for your general information and assistance only, not as specific advice to you. You should discuss your specific legal questions with your legal advisor.

FORMS OF BUSINESS ORGANIZATION

One of your first decisions will be the form of business entity you will use for your business. Most businesses formed in Nova Scotia are either a Proprietorship, a partnership, or a limited corporation. There are other forms of business such as Limited partnerships and cooperatives but they are not often used.

1.1 Proprietorship

A proprietorship is an individual carrying on business by himself or herself often using a Business name. With some exceptions a Proprietor must register the Business name with the Registry of Joint Stock Companies ("RJSC"). The RJSC must approve a Business name before it is registered. If a Proprietor requests registration, and does not register, he or she may face a fine and will not be able to sue for debts owed to the business. A

Proprietor is completely responsible for the debts of the Proprietorship and is entitled to all the profits from the business. The proprietor has complete control of the business.

1.2 Partnership

A Partnership comprises more than one individual or corporation carrying on business together under a Business name. With some exceptions Partnerships must register with the RJSC. The RJSC must approve the Business name before it is registered. If a Partnership requests registration, and does not register, it may face a fine and will not be able to sue for debts owed to it.

A Partnership is a separate legal entity from its partners; it may own property in its own name, may sue and be sued etc. Partners, however, are personally responsible for the debts of the Partnership. One partner can bind the Partnership to debts for which all partners are responsible. Creditors of a Partnership may recover partnership debts from any or all partners-usually the partner with the "deepest pockets". Partners are entitled to all the profits from the business. The partners share control of the business.

A partnership Agreement setting out management duties, required

investment of capital, profit sharing, workload sharing and how the partnership will be wound up if a partner decides to leave is highly advisable. Many partnerships have come to grief because the partners did not fully discuss and agree on these issues before starting business together. If partners do not have a Partnership Agreement they are governed by the *Partnership Act* which codifies the law of partnerships.

1.3 Corporation

A Corporation comprises one or more individuals or corporations carrying on business under a limited liability corporation. Corporations in Nova Scotia are most often created under the *Nova Scotia Companies Act* through the RJSC or federally under the *Canada Business Corporations Act*. For most purposes a Nova Scotia corporation is the least expensive and most appropriate choice. The corporate name must be approved before a corporation is formed. Name approval can take one or more days depending on the name desired. One can get a number name e.g. "12345678 Nova Scotia Limited" with a telephone call and no search fee.

A corporation doing business in Nova Scotia must pay an annual registration fee. If it uses a Business name it must

also register that name and pay the required fees for filing and annual registration. (If you intend to use a business name for a corporation be sure you use the correct form for a corporation. Some shareholders have inadvertently registered themselves personally under the business name rather than the corporation; this has led to confusion and, at worst, personal responsibility for corporate debts.) A corporation is a separate legal entity from its owners (called "Shareholders"). It may own property in its own name, may sue and be sued, etc. Shareholders are not personally responsible for the debts of the corporation unless they agree to be responsible for its debts. The shareholders appoint directors and officers to control the corporation and to manage its business. In a small corporation the shareholders, directors and officers are usually the same person or persons. A Shareholders' Agreement setting out matters such as management duties, required investment of capital, profit sharing, workload sharing and how shareholders may dispose of their shares of the corporation is highly advisable. Many corporations have come to grief because its shareholders did not fully discuss and agree on these issues before starting business together. Shareholders holding more than forty percent (40%) of the shares in the corporation will neither qualify for EI nor pay EI deductions.

Under the Equity Tax Credit Program, eligible investors in eligible businesses are entitled to claim a personal income tax credit. Any unused credits may be carried forward seven years or back three years. Under the new Small Business Tax Deduction, eligible corporations may claim a three year Nova Scotia corporate income tax holiday. Ask your accountant or lawyer about these programs. Refer to the Nova Scotia Department of Finance website for on-line information at www.gov.ns.ca/finance.

1.4 Incorporating an Existing Business

Incorporating an existing business may require a transfer ("rollover") of assets from the proprietorship or partnership to the corporation. This requires legal and accounting assistance to ensure you minimize income and sales taxes in the process.

There are a number of considerations which go into the decision as to whether or not you should incorporate an existing business. These considerations may basically be broken down into the two following areas:

Commercial Considerations

Some of the more important commercial considerations include:

- separating your business and personal activities;
- efficiencies and protection gained from separating business activities in a number of corporate entities;
- the value of continuing business operations through a separate legal entity;
- the administration costs; and
- the possibility of limited liability to the amount of your investment in the business.

Taxation Considerations

Some of the more important taxation considerations include:

- tax incentives for a corporation may make it more advantageous to receive business income at the corporate, as opposed to individual, level;
- availability of a different year end for a corporation from December 31 and the benefits/disadvantages of a tax holiday;
- capital gains tax exemption available;
- whether you have other sources of income which you would wish to apply losses to; and
- the availability of income splitting.

1.5 Accounting Advice

Before starting any new business (especially Corporations and Partnerships), you should consult an Accountant for general accounting and tax advice as well as for assistance in setting up accounting records correctly from the beginning. An accountant may help you plan revenue, expense, and cash requirements. Your accountant should also be able to warn you if your ownership of shares in the new company will affect the small business deduction of other companies you may own.

1.6 Business Plan

Making a business plan for your new business is essential. Most banks have business planning booklets available for you to use.

If you are looking for general information or for sources of business related information such as sources of materials or manufacturers of specific products check with Access Nova Scotia. Their offices have a wealth of source material and reference books.

REGISTRATIONS

2.1 General

Be sure you register your business, as appropriate, with the:

- Registrar of Joint Stock Companies (902) 424-7770
- Provincial Tax Commission 1-800-565-2336
- Workers Compensation Board 1-800-870-3331
- Regional Director of Assessment for Business Occupancy Tax Purposes Western Region (Kings): 679-6106 Hants: 1-800-280-8979
- Obtain a Business Number from Canada Revenue Agency 1-800-959-5525, the Business Number replaces the former Employer Number, the GST Number and, in the case of a corporation, the Corporation Tax Number.

- Visit the Service Nova Scotia and Municipal Relations site - www.gov.ns.ca/snsmr/ - under the Access Nova Scotia link they have a PAAL (permits, Approvals & Licences Program) that may help you find and locate all the agencies you will have to get permits from.

2.2 Business Licences & Zoning

You may need to obtain local business licences – check with your local Town or Municipal Office. For example, taxi operators require Town/Municipal licences. Also be sure that local Zoning By-laws will permit your business at the intended location. Other businesses require Provincial licences such as Licensed Restaurants that require the appropriate liquor licenses. Some businesses such as certain transportation businesses may require either or both provincial and federal licences.

2.3 Door-to-Door Sales

If the business will involve door-to-door sales you will require a licence under the *Direct Sellers' Regulation Act*. Visit the Service Nova Scotia and Municipal Relations site - www.gov.ns.ca/snsmr/ – go to the Access NS link - go to Permits, Forms & Licenses to review where you can get a permit.

2.4 Credit Sales

If you intend to charge interest, be sure you are properly registered under the *Consumer Protection Act* (consumer sales on credit). Consult your own legal advisor. Visit the Service Nova Scotia and Municipal Relations site - www.gov.ns.ca/snsmr/ - go to the Access NS link - go to services for businesses.

2.5 Overseas Sales

If you will be selling goods overseas, there is a recent Nova Scotia law called the *International Sale of Goods Act*. The Act has brought the United Nations Convention On Contracts For The International Sale of Goods into force in Nova Scotia. Like the *Sale of Goods Act* in Nova Scotia, the Convention provides rules that apply to parties who have not addressed issues in their Agreements. If you are

selling goods outside the Country you mayor may not want to become bound by the Convention. Again, appropriate inquiries may be necessary.

You may also wish to contact the federal Foreign Affairs & International Trade for information on trading outside Canada. The Department has a number of programs to facilitate foreign trade.

GENERAL RESTRICTIONS ON BUSINESS

The *Retail Business Uniform Closing Day Act* and *Retail Business Designated Day Closing Act* limits retail businesses from operating on certain days, and governs the operations and payment of employment on certain days. For more information call Labour Standards at 1-888-315-0110.

The *Remembrance Day Act* prohibits many business activities on Remembrance Day.

The *Labour Standards Code* regulates minimum employee benefits such as vacation pay and notice of termination. In the area of employee termination the common law often provides greater benefits to a terminated employee than this code. Be sure to consult your lawyer about any potential wrongful dismissal claim before you fire an employee.

The *Human Rights Act* regulates against certain types of discrimination in the workplace. Depending on the size of your business it may be advisable for you to speak to the Human Rights Commission 1-877-269-7699 about the regulations it administers. You may also want to establish business policies that will help ensure your compliance with this Act.

3.1 Trademarks, etc.

Before you start using a product or service name it is recommended that you have a search made of the proposed name to avoid possible conflicts with existing trademarks. If you have a search done and the name

is clear, you may use the proposed name. The date you first use the name establishes your legal right to use it. If someone else begins to use the name later or attempts to register it later you may block their use or application. If you don't intend to use a proposed name right away but want to protect it you can apply for a trademark under a "proposed use application". Processing a trademark application varies from eight months to two years assuming no opposition.

You must register your trademark in each Country where you want it protected. If you register in Canada, you are protected in Canada, but not in other countries.

For more information visit the Canadian Intellectual Property Office website at www.cipo.ic.gc.ca.

PERSONAL LIABILITY

When starting a new business, you should be aware of potential personal liabilities. These include:

4.1 Business Debts

In a proprietorship you are solely responsible for business debts. In a partnership, each partner is "jointly and severally" liable for partnership debts - in plain English this means the lender can go after the partner with the deepest pockets for the full amount owing, and let him/her go after the other partners for their share of the debt.

4.2 Co-signing Corporate Contracts & Personal Guarantees

You may become liable for business debts of a corporation by guaranteeing its debts or co-signing its obligations such as leases. You should resist this exposure if at all possible. If you sign a contract on behalf of a corporation reduce your risk by clearly signing on behalf of the corporation this way: "Corporation Name" by: yours signature. [your position e.g. President] If you just sign your name without clearly showing you are signing for the corporation expect to be named,

personally, in any lawsuit arising from that contract.

4.3 Banks & Institutional Lenders

“Limited liability” does not ordinarily apply to bank or institutional lender loans to small corporations because these lenders invariably require shareholders to personally guarantee their corporation’s debt.

4.4 Statutory Liens

Proprietors, partners and directors of corporations have personal liability for what are referred to as “statutory liens”. These include the business’ responsibility for payments under the *Workers’ Compensation Act*, *Labour Standards Code*, the *Excise Tax Act (HST)*, the *Income Tax Act* (payroll deductions and income tax), *Employment Insurance Act* deductions, and *Canada Pension Plan* deductions. There are, also, a wide variety of responsibilities of proprietors, partners and corporate directors for environmental problems – see the section on Environmental Issues below.

PROTECTING YOURSELF, YOUR HOME AND YOUR ASSETS FROM BUSINESS LOSSES

5.1 Signing Documents

Be sure that you understand what you are signing – READ EVERY DOCUMENT YOU ARE ASKED TO SIGN CAREFULLY BEFORE YOU SIGN. Do not assume everything is all right. If you are signing a document involving more money than you can afford to lose call your lawyer before you sign. Most lawyers appreciate this type of call before problems arise - because they can help you avoid a serious problem. If you have a good working relationship with your lawyer this type of advice can usually be handled very quickly and reasonably. If you wait to call until after you have signed it may be too late.

5.2 Leases

You should always have your lawyer review your proposed lease before

you sign it. Apart from the obvious provisions such as rent and term, your lawyer will check for other features such as renewal and over-holding conditions. For example, some leases automatically renew for an additional term (usually one year) if the tenant does not give the landlord notice (often at least three months) before the lease is up. This often comes as a great shock to tenants who find themselves bound for another year of tenancy when they thought they were free to leave at the end of the term by doing nothing.

5.3 Deductibility of Losses

Try to ensure that any money you pay on a Guarantee for your business’ debts is deductible for Income Tax purposes. Consult your accountant or lawyer about making an appropriate Guarantee agreement and fee. There are provisions in the *Income Tax Act* enacted to deal with this matter.

5.4 Limit Your Risk

See paragraph 4.2 above. Try to arrange “several” guarantees rather than “joint and several” i.e. limit your guarantees to your share of the debt only, rather than for the entire debt.

5.5 Theft

Fraud and theft are, unfortunately, common problems in all levels of business. In a survey conducted of larger businesses by a national accounting firm 63% indicated fraud had occurred in the last 24 months. One not-so-small business owner we know makes a point of picking up and reviewing his firm’s mail each day so he knows what is going on; even his business had an employee commit theft but, because of his attention to the firm’s records, he noticed it almost immediately. Be sure you pay attention to what is going on in your business. Keep a close eye on your business record, follow up anything out of the ordinary. Review your internal controls with your accountant to be sure they are adequate. Reconcile your bank records monthly. Limit petty cash - require and closely check the use of petty cash vouchers. If something “doesn’t seem

right” with the business performance consider the possibility of theft or fraud and have your accountant carefully check or audit your records. Fraud is often committed by the most trusted employees of a business, never think that a particular employee “wouldn’t do that to us”. Fraud is sometimes indicated by:

- Sales/Income decreasing while payables and receivables are increasing,
- Your line of credit is used to its limit for long periods of time,
- There is significant excess inventory,
- There is an increasing number of year-end adjusting entries.

5.6 Deductibility of Interest

If you have to borrow money for both personal and business expenses be sure to use as much of your personal resources as you can for personal expenses. Borrow for business purposes. This will allow you to deduct the maximum amount of business related interest expense for tax purposes.

5.7 Protecting your Home

Consider transferring your home to your spouse’s name if he or she is not responsible for the business’ debts. Do this before your business is in financial trouble; there are laws that permit creditors to reverse transfers of property made to avoid creditors. The deed of the family home to your spouse should be drafted so it preserves your rights in the home under the *Matrimonial Property Act*. Such a transfer will not affect your responsibilities to any existing Mortgage Lender who will continue to have the right to collect mortgage payments from you. Expect to be required to sign any further Mortgages or Renewals or Amendments of the Mortgage on your home.

Banks often require a Mortgage on your home to secure business debts even if it is owned in the name of your spouse. If the Bank requires such a Mortgage,

the home will become subject to any debts or guarantees you may have with the Bank regardless of the transfer of it to your spouse. It will, however, be safe from other creditors.

5.8 RRSP

In general, a creditor may seize RRSP assets of a bankrupt but this right is limited under certain Life Insurance related products in which the debtor has designated a spouse, child, grandchild or parent as beneficiary or there is an irrevocable beneficiary. There are limits to this protection but if you establish the plans early enough when there is no financial trouble you may be able to protect at least some of your retirement savings from seizure.

Creditor protection will not be available if you are in financial difficulty when you transfer assets to the RRSP. The *Bankruptcy and Insolvency Act* now offers protection for RRSP's except for any contributions made to any plans or funds in the twelve months before the date of bankruptcy. Creditor protection is a complicated area. The *Bankruptcy and Insolvency Act* and provincial legislation must be referred to. The rules vary slightly by province. Check with your financial, insurance and legal advisors.

5.9 Records

Keep good records. A frequent collection difficulty is having the collection disintegrate into a "He said", "She said" argument. One technique that works well to prevent this is to keep a record of all communications with each customer and supplier – a notebook with a page for each customer and supplier works especially well. During or after each communication with the customer or supplier, jot down the date, time and the important parts of the discussion. Confirm all agreements with the customer or supplier that involve material amounts of money or risk in writing or by e-mail (keep copy for file). We like to use two part self-carbonized forms that provide an original and reply copy for the customer. If you form a

habit of keeping good running notes of your dealings with customers/suppliers and confirm important discussions with them in writing, you will have very few problems and even fewer problems in collecting your accounts. Such records are powerful evidence in your favour if a matter goes to Court.

5.10 Insurance

Cover yourself as fully as you can for the risks peculiar to your business operation. Be sure that you have enough third party liability insurance and that your business assets are appropriately insured against loss. Ask your insurance broker for advice and choices.

ENVIRONMENTAL CONSIDERATIONS

6.1 General Comment

If you are considering a business that may involve a risk to the environment, be sure you contact the Department of the Environment and fully inform yourself of your responsibilities and those of your business under the *Environment Act*. The penalties are severe.

6.2 The Environment Act

The Nova Scotia *Environment Act* operates alongside corresponding Federal Legislation and Regulations. The Act is extremely wide in its scope and can have serious effects on almost every business. It requires individuals and businesses to follow a strict regime of rules and regulations with respect to a vast number of activities. A lot of people understand that environmental legislation deals with such things as oil spills, but few realize that it also covers activities such as pesticide sales and application, well digging, storage of fuel, certain types of buildings or extensions to buildings, the use or alteration of water ways and even motor vehicle salvage, among many others. Everyone from farmers to landscapers, from painters to printers and especially manufacturers can fall under these environmental rules. Business owners should consult the

Department of the Environment (902) 424-3600 regarding standards for your type of business and their legal counsel for ways of protecting themselves against and setting up defences to the possible high penalties and costs under the environmental law. It should be pointed out that officers and directors of corporations are personally liable for environmental offenses of their corporation.

6.3 Establish & Enforce Environmental Policies

You should establish, and enforce, proper environmental policies and procedures for your business if it involves potential environmental risks.

COLLECTING YOUR ACCOUNTS SETTING YOURSELF UP TO WIN

Collecting unpaid accounts is an unpleasant but necessary task for almost all businesses. Establish a frequent review of outstanding accounts and act on them quickly. There are a number of things that you can do that will make dealing with overdue accounts easier for you. These include:

7.1 Keep Good Records

See paragraph 5.9, above.

7.2 Identify your Customer

Set up your customer account information with care. Get and use the customer's correct full name and address. Under the *Personal Property Security Act* it is important to get both the customer's birth certificate name(s) and birth date for registration purposes. If necessary confirm a business' name with the RJSC. This is easily accomplished via the internet at www.gov.ns.ca/snsmr/access/business/registry-joint-stock-companies.asp. Get both the civic address and mailing addresses of the customer and all its telephone numbers such as business number, fax, cell phone, and even the home number of the customer's owner. Lawyers frequently have trouble determining who to sue when doing collections because clients records

often are not clear about who, exactly, is the customer.

When you open an account, get as much other information as you can about the customer. Note the Bank(s) the customer deals with (if you don't want to ask you can look at the cheques with which they pay their accounts). Who else do they do business with, who might owe them money? Knowing where the customer's money is and where it comes from can be used to locate and seize it if you have to sue. On a more positive note, gathering this additional information may alert you to new marketing opportunities with the customer.

While the collection of customer information is important, remember that the collection, use and disclosure of personal information by businesses is governed by the *Personal Information Protection and Electronic Documents Act*. Schedule 1 to this legislation establishes various easy-to-read rules on these matters. For more information, visit the Office of the Privacy Commissioner of Canada website at www.priv.gc.ca.

7.3 Qualify Your Customers

Do your best to identify poor credit risks. Refuse credit to deadbeats. Ask your banker for advice. Subscribe to a credit rating service. Tough as it is, say No!

If your customer is a small corporation, set up the account and bill under both the corporation's name and the owners' names to ensure the owners are personally responsible for the account. Apart from this, if you can, identify the customers who will cause you more "agony" than they are worth. Refer the really difficult customers to the competition. Save your valuable time for the good customers.

7.4 Take Security on Large Sales

If you are making large sales to customers, consider taking security for payment (see section 8, below). Consider having the owner of a corporate customer co-sign or

guarantee the debt. Consult your lawyer to be sure you do it right.

7.5 Liens

The right to exercise a lien can arise from common law and Nova Scotia statutes. Some businesses are entitled to keep possession of a customer's goods or property until the account is paid. Repair work on vehicles or equipment, for example, gives the worker a lien on the vehicle or equipment as long as it is in the worker's possession. The *Builders' Lien Act* provides a procedure for selling the vehicle or equipment if the account for the work is not paid. There are liens provided for other businesses under other Acts.

Liens, generally speaking, exist while the business has possession of the item on which the work was done. The right to hold goods usually ends when the business turns the goods over to the customer.

Businesses that supply goods and labour to construction projects generally are entitled to register a lien against the land to which the goods or labour were supplied; there are strict time deadlines for filing and prosecuting this type of lien -consult your lawyer.

7.6 Maintain Your Business Registration

To be able to sue a customer you must be registered as required for your form of business with the Companies Office. If you are not properly registered, your case will be thrown out of court, you will have to register and start your legal action again:

7.7 Collecting Outstanding Interest

If you intend to collect interest on the amount owed, be sure you are properly registered to collect interest as required under the *Consumer Protection Act* (Consumer sales on credit). Be sure your contract with the customer states the customer's obligation to pay interest and the rate of interest. Ensure that the customer understands (at the time the customer enters into the contract

with your business) that interest will be charged on overdue accounts.

7.8 Jurisdiction of Nova Scotia Courts

If you will be making contracts with others outside your County or outside Nova Scotia (e.g., by fax, telephone or E-Mail) be sure that you have a 'jurisdiction clause' in your contract specifying that the contract is deemed to have been formed in Nova Scotia and that it is subject to the jurisdiction of the Nova Scotia Courts. Without a jurisdiction clause you may very likely windup with a contract that is, under contract law, made in another County or jurisdiction. If a contract is made outside your County in Nova Scotia, you may have to use the Small Claims Court in the other County to sue the customer. Similarly, if the contract is formed outside Nova Scotia, you may have difficulty taking and enforcing a judgment against your customer in the other jurisdiction. Please accept this note as general advice only; it is essential that you get specific legal advice in drafting the necessary forms of contract for your particular business purpose.

7.9 Waiving Your Strict Legal Rights

If you waive your strict legal rights under your contract with your customer at any given time, make it clear in writing that your waiver is made without prejudice to your right to insist on your legal rights in future dealings with the customer.

7.10 Demand Letters

When an account becomes overdue and you send a demand letter, Registered Mail often carries more weight. Some hardened debtors refuse Registered Mail. We have at times sent a duplicate letter in a plain white envelope by regular mail without a return address just in case the customer refuses to accept the formal letter.

7.11 Bankrupt Customers

The *Bankruptcy and Insolvency Act* and the *Nova Scotia Companies Act* require certain notices, notice periods and procedures before a secured

creditor enforces security against a customer. Be sure you get legal advice if you intend to enforce any security you have with your customer.

The *Bankruptcy and Insolvency Act* provides unpaid suppliers with the right to repossess goods. This right must be exercised within thirty days after delivery of the goods to the purchaser, and applies if the purchaser is bankrupt or is in receivership when the demand to repossess is presented. The repossession is at the expense of the supplier, who may only repossess if the goods are identifiable and have not been resold. Partial repossession is available, if the goods have been the subject of a partial payment.

7.12 Lawyers' Letters

If your efforts to collect from a client fail, consider a lawyer's letter before you send the account to a credit agency. We have found that our "nasty letters" have resulted in up to 66% success rate in collections for clients.

7.13 Suing the Customer

Once past the point of demand letters you must consider the economics of the collection. Is it worth going after the customer? Does the customer have any resources to collect against? Should you take the matter to Small Claims Court (claims under \$25,000), put the collection in the hands of a collection agency, or instruct a lawyer to take the matter before the Supreme Court? Each process has its advantages and disadvantages. You should discuss your collection strategy and policies with your lawyer. If you do this early on you will develop procedures and forms that may minimize future need for your lawyer's help. Whatever your strategy, it is important to make any threat to take legal action (whether in Small Claims Court or otherwise) good. If you don't follow through you will get a reputation as a "wimp" and people will pay little attention to your demands.

7.14 Alternate Dispute Resolution

Alternate Dispute Resolution ("ADR"), is an increasingly popular method of resolving disputes. In ADR parties

reach their own settlement agreement, outside the Courts, with the help of a mediator. Our Firm offers both Mediator services and representation at mediation.

7.15 Leasing Equipment to Customers

If you will be leasing equipment to customers file a notice of the lease under the *Personal Property Security Act* to protect yourself against the customer's other creditors. Consult your legal advisor. Generally you must file the contract in the registry office for the County in which the equipment was delivered.

SECURITY INTERESTS

The law governing liens on personal property (everything except real estate) in Nova Scotia comes under the *Personal Property Security Act*. Here are some terms you may hear when your lender brings up the topic of "security" or "collateral" some of these types of security will be replaced by General or Specific Security Agreements under the new Act:

8.1 Assignment of Life Insurance

A transfer by a Borrower to a Lender of the right to collect the proceeds of a life insurance policy on the Borrower's life as security for a loan.

8.2 Bank Act, 427 Security

A security interest in certain eligible assets - usually inventory or agricultural products - taken only by Chartered Banks. Under this security the bank acquires legal title to the assets while Borrower maintains possession of them. Governed by the *Federal Bank Act*.

8.3 Mortgage

A transfer of legal title to land to a Lender as security for the payment of a debt.

8.4 Security Agreement

There are several varieties of security agreements that may be used to give liens on personal property under the *Personal Property Security Act*. Consult

your lawyer for specific advice in this area.

8.5 Guarantee

A legal agreement in which a person or corporation promises the Lender he or she will pay the debt of a debtor if the debtor does not pay the debt.

8.6 Postponement of Claim

An agreement by which a Lender with a prior loan lets a Lender with a later loan collect the later loan before the prior loan is paid.

8.7 Pledge

The physical delivery of possession of an asset by a Borrower to a Lender as security until the loan repaid. On default the Lender may sell the asset.

8.8 Pledge of Corporate Shares

The physical delivery of possession of share certificates by a shareholder Borrower to a Lender as security until the loan repaid. The shareholder usually can vote the pledged shares and receive dividends on them unless the loan is in default. On default the Lender may sell the shares.

8.9 Promissory Note

A written promise by a Borrower to a Lender to pay a specific sum on specific terms.

9.0 Business Sales

Lawyers often see an Agreements for the Purchase of Businesses done on the standard real estate sales contract form. That form was designed for residential real estate, not for a business and is generally considered entirely unsatisfactory for the purpose of transferring a business.

Before buying a business, consult your accountant and your lawyer. Your advisor will help you set up an Agreement of Purchase taking into account income tax and business considerations. There are often legitimate ways of structuring a purchase that will significantly lessen your after tax costs of the purchase. Be sure you allow enough time between signing the agreement and closing so your lawyer and accountant can make the necessary inquiries to be sure

you get what you bargained for. Not getting such advice before you sign an agreement to purchase a business can be disastrous.

You may wish to consult a business acquisitions broker to help you locate a business and set up a purchase strategy.

HOME BASED BUSINESS CONSIDERATIONS

10.1 Zoning

If you plan to operate a business out of your home, be sure you are permitted to conduct such a business under the Zoning Laws governing your property. If you are working solo out of your house, it is unlikely you will have zoning problems. Many zoning authorities permit home offices. Most solo white collar home businesses are invisible to the outside world unless numbers of people come to your home on a regular basis. You may wish to find out from the Development Officer of your Town or Municipality what the rules are in your location for your neighbourhood, then decide how to proceed.

10.2 Insurance

Be sure you fully inform your insurance agent if you intend to operate a business out of your home. There are now special Home Business Policies available. Insurance contracts are contracts of "utmost good faith". By starting a business in your home, you may be changing the risk to the insurance company which, if you do not fully disclose your business intentions, may cause your insurance to be void. The same applies to your automobile.

10.3 Deductible Expenses

If you have a home office, be sure to consult your tax advisor about what are

appropriate deductions for the use you make of part of your home.

EMPLOYEE CONSIDERATIONS

11.1 Labour Standards Code

If you will hire staff get a copy of the *Labour Standards Code* and read it. (call the Nova Scotia Department of Labour, Labour Standards Division (902) 424-4311 or toll free 1-888-315-0110). The Code sets out the basic legal rights of employees and employers. The Code does not include common law rights of employees that may be far more onerous than the Code. This is particularly true in the area of dismissing employees.

11.2 Wrongful Dismissal

Consult your lawyer before you dismiss an Employee. There is a great deal of law in the emerging area of "wrongful dismissal". You can greatly reduce the risk of a wrongful dismissal suit by having employees sign appropriate Employment Contracts. Keep good records of your employee's performance, note deficiencies in the record and give the employee written notice of his or her performance deficiencies, the steps the employee must take to correct such deficiencies, the deadlines for improvements, and the consequences of failing to improve. Always act reasonably; be fair but firm. Never act or speak in anger - wait until you have calmed down.

11.3 Purchasing a Business

If you are purchasing a business pay particular attention to the status of all employees who are "coming with the business". Even if you buy the assets only, but continue the employment of existing employees, the law generally

considers the employees' rights under the *Labour Standards Code* to continue. This may mean, for example, that you may not be able to lay off long term employees of the previous business if you continue their employment with you. Again, appropriate legal advice is essential before entering into an Agreement to buy a business. The necessity of careful consideration is even greater when one is purchasing a business with a trade union involved.

11.4 Workers' Compensation Claims

The Workers' Compensation system is rapidly changing. Employers are now entitled to appeal decisions of the Workers' Compensation Board, and entitled to appear and be heard at a worker's appeal. Workers and employers can be represented at appeals, and workers are often entitled to free legal assistance through the Workers' Advisers Program. Issues such as "Experience Ratings" and "Re-Employment Obligations" may affect your business. If you receive a decision or notice from the Workers' Compensation Board you may want to seek legal advice. Keep in mind that the Workers' Compensation Act and Regulations contain many time limitations.

HELP FOR

It is important for a new business owner to seek out and find a group of advisors who can monitor the performance of the new business. We are not referring to an accountant or lawyer but to seasoned business owners who have been there. If you can assemble such a group for advice and support, it can often not only help prevent an early demise of the business but can also open the doors for growth.