

THE BUSINESS LEGAL LIFECYCLE

How to Successfully Navigate
Your Way from Start Up to Success



JEREMY STRETEN

First published by OMNE Publishing in 2016

Copyright © Jeremy Streten 2016

All rights reserved. The moral right of the author has been asserted. No part of this book may be reproduced by any person or entity, including internet search engines or retailers, in any form or by any means, electronic or mechanical, including photocopying (except under the statutory exceptions provisions of the Australian Copyright Act 1968), recording, scanning or by any information storage retrieval system without the prior written permission of the publisher.

National Library of Australia Cataloguing-in-Publication entry

Creator: Streten, Jeremy, 1979- author.

Title: The business legal lifecycle : how to successfully navigate your way from start up to success / Jeremy Streten.

ISBN: 9780994551405 (paperback)

9780994551412 (ebk.)

Notes: Includes index.

Subjects: Business enterprises -- Law and legislation -- Australia.

Success in business -- Australia.

Dewey Number: 346.94065

Editing by OMNE Author Solutions

Cover design by Designerbility

Layout by OMNE Author Solutions

Printed by OMNE Publishing www.omne.com.au

ebook by OMNE Author Solutions

This book is available in print and ebook formats.

For Abigail and Benjamin

Disclaimer

- (a) This information was not provided to suit any specific circumstances and is general in nature only. You acknowledge that you must make your own enquiries to determine the validity and appropriateness of the information provided herein.
- (b) This information is not designed to provide, and is not to be substituted for, legal advice and other professional advice.
- (c) Never disregard legal or professional advice, or delay in seeking it, because of the provision of this information. Never rely on any information we provide in place of seeking professional legal advice. You should also ask your lawyer or other professional advisers to assist you in interpreting any information we provide, or in applying the information to your individual circumstances.

Contents

Foreward	7
Preface	9
Introduction	11
Chapter 1	Phase 1 – Conception 15
1.1	Your Initial Team 16
1.2	Goals 17
1.3	Choosing the Right Name 17
1.4	Conclusion 18
Chapter 2	Phase 2 – Start-Up 21
2.1	Structures 22
2.2	Leasing Premises 31
2.3	Directors' Responsibilities 36
2.4	Becoming a Franchisee 38
2.5	Borrowing Money 39
2.6	Insurance 46
2.7	Conclusion 48
Chapter 3	Phase 3 – Initial Clients 51
3.1	Who is your Ideal Client? 52
3.2	Tracking 53
3.3	Businesses Based on one Client or a Government Body 54
3.4	Where are you Going to get the Clients from? 55
3.5	Your Initial Agreement/Terms of Trade 55
3.6	Debt Recovery 57
3.7	Conclusion 58
Chapter 4	Phase 4 – Bringing on Employees 61
4.1	Employee vs Contractor 63
4.2	The Interview 65
4.3	The Agreement with your Employee or Contractor 65
4.4	Liability for Employers 66
4.5	Workplace Policies 67
4.6	Conclusion 68
Chapter 5	Phase 5 – Protecting Intellectual Property 71
5.1	Trademarks 72
5.2	Separate Entity to Hold your Intellectual Property 74
5.3	How-to Guides (including Operating or Process Manuals) 77
5.4	Patents 78
5.5	Conclusion 78
Chapter 6	Phase 6 – Maximising your Business/Bringing in Investors 81
6.1	Maximising your Business 83
6.2	What to Look out for in an Investor 83
6.3	Shareholders'/Unitholders' Agreements 86
6.4	Joint Venture Agreements 88
6.5	Conclusion 89
Chapter 7	Phase 7 – Expansion/Franchising/Licensing or Buying an Existing Business 91
7.1	New Business Premises Considerations 93
7.2	Franchise 94

7.3	Licensing	96
7.4	Buying an Existing Business	97
7.5	Conclusion	98
Chapter 8	Phase 8 – Estate Planning	101
8.1	Wills	102
8.2	Power of Attorney and Advanced Health Directives	104
8.3	Personal Insurance	105
8.4	Buy/Sell Option Agreements	106
8.5	Conclusion	107
Chapter 9	Phase 9 – Investing in Property	109
9.1	Buying Residential Property	110
9.2	Buying Commercial/Industrial Property	111
9.3	The Process of Buying a Property	112
9.4	Important Factors to Consider when Buying a Property	113
9.5	What Questions are Important to ask the Real Estate Agent?	115
9.6	Selling Property (be it Residential, Commercial or Industrial)	116
9.7	Conclusion	119
Chapter 10	Phase 10 – Litigation and Dispute Resolution	121
10.1	What is Litigation?	122
10.2	Dispute Resolution	124
10.3	Debt Recovery	126
10.4	Defending Proceedings brought against a Business	127
10.5	Conclusion	129
Chapter 11	Phase 11 – Sale of Whole or Part of the Business or the Listing on a Stock Exchange	131
11.1	Taking Cash for Fees	133
11.2	Selling a Business	133
11.3	Considerations about the Sale of Part of the Business	138
11.4	Listing a Business on a Stock Exchange	139
11.5	Conclusion	141
Chapter 12	Phase 12 – Retirement	143
12.1	Setting Up for Retirement	144
12.2	Superannuation	145
12.3	Buyout Periods	145
12.4	Conclusion	147
Chapter 13	Phase 13 – Insolvency/Winding up	149
13.1	Insolvency	150
13.2	Winding Up	151
13.3	Bankruptcy	152
13.4	De-registration	154
13.5	Conclusion	154
Conclusion		157

Foreword

I believe entrepreneurs are extraordinary. Starting, scaling, and selling a business is one of the greatest endeavours a person can embark on. This endeavour has the potential for great financial rewards as well as personal growth but it also comes with enormous risks and many pitfalls.

Being an entrepreneur can be a lonely journey with no one to turn to for guidance, support or advice. For many entrepreneurs, they can't talk about their challenges with their employees, their family or their friends because they "just won't understand" or they fear being perceived as arrogant when talking about their business. This leaves many entrepreneurs feeling isolated when trying to figure it out on their own or, worse still, being guided by what they read on the internet or social media. From what I have learnt by helping over 1160 entrepreneurs grow sustainable businesses, this is never more true than when looking at the legal side of growing a business.

One of the blessings of growing a business is that you get multiple opportunities to test and measure, tweak and improve in all areas of business. If you make a mistake, you learn from it and do it better next time. Unfortunately, this does not apply to the laws around growing a business; for the most part, you only get one shot to get it right, so it has to be done right the first time.

Unfortunately, entrepreneurs often seek professional legal advice way too late, often to their personal peril or sometimes to the demise of their business. That's where the Business Legal Lifecycle steps in. It will give you early and accurate knowledge before it's too late.

This practical and easy-to-read book will become your companion guide as you discover the legal obligations and options that await you at each phase. Written with insightful intelligence and full of practical examples and anecdotes, this is a legal and business book that is easy to read and simple to follow. It is a book every entrepreneur should have within arm's reach because it will help you safely navigate the often nerve wracking and treacherous waters of the laws associated with running a business.

Although there are many books on how to grow a successful business (of which I have written one), there are few, if any, that focus on the legal steps associated with starting, scaling and selling a business. This book is the missing and critical piece of the puzzle that aims to support entrepreneurs in any phase of their business development. It is a long overdue and much needed resource to be added to the bookshelves of small to medium business owners everywhere. It gives the reader insight with the ability to predict and prepare for the future. Properly applied, it will allow entrepreneurs to not only grow a sustainable business but to make sure their treasured asset is also well protected.

The Business Legal Lifecycle is laid out like an old 'choose your own adventure'

novel, allowing you to enter at the place that is right for you. It then gives you the options you can take with the pros and cons of each, so you can be well-informed and grow your business with confidence and certainty.

This is a refreshing book not written by some lawyer sitting in their ivory tower pointing their judgmental finger at you like your school teacher did when you didn't do your homework. It's written by someone who not only cares about entrepreneurs but who has walked the path himself. Jeremy started his business from scratch and has grown it into an iconic boutique legal practice. He is also an entrepreneur who has experienced the highs and lows of growing a sustainable enterprise. Unlike many legal texts which are long, boring and full of legalese, this book is written in plain English, making it simple to understand and easy to apply. It is also written with compassion, care and clarity.

In my experience, people want more direction, not more information. While this is an informative book, you will also come away with very clear direction as to what your next business legal steps should be. I expect it will help you navigate safely through your entrepreneurial pathway as you set out to achieve your dreams and desires in business.

Enjoy.

Dr David Dugan

BDS_c, Adv Dip Bus, Grad Dip Clin Dent, Dip CH, Dip Fin Planning

Author of Bullet Proof Business, Amazon No 1 Best Seller

Business Coach & Mentor

Founder of ELITE500 Mastermind

Preface

As a lawyer and a business owner I am often frustrated with the legal industry as a whole. All too often, advice from lawyers is boring and repetitive with no thought for the client's actual situation. What happens more often than not is that clients are scared of going to their lawyer, scared of being told that they need to spend tens of thousands of dollars to do everything that they need to do. There is no commercial advice given and legal advice becomes unworkable in the real world. This frustration led to the creation of the Business Legal Lifecycle, a concept to shift legal advice away from the simple 'do everything at once' approach to a more commercial set of instructions for every business owner to use.

This book is all about demystifying the legal processes and unlocking the often confusing world of legal advice for business owners. My aim is to give business owners a reference guide to be able to use in business, to give guidance on legal terms, and to give a clear direction of where a business is and should be going. The 13 phases of the Business Legal Lifecycle have been developed to solve these issues and give business owners a clear path for their business.

As with anything in life, business owners are on a journey of discovery. In writing this book, I have developed a deeper understanding of the Business Legal Lifecycle in general and discovered new and interesting ways to look at businesses. The examples I have given are designed to give that clarity to business owners to be able to identify whether they have encountered a similar problem in the past or as a beacon saying to a business owner that they are not alone and that issues that they face in business are normal. Moreover I want to give you the knowledge and confidence to tackle problems head on and know that other business owners have been there before and there is always light at the end of the tunnel.

In writing this book I have researched other business books and legal processes and have also undertaken an extensive review of the business owners that I have dealt with over the years. I have examined where businesses did things correctly and where they did not, and I have developed the phases of the Business Legal Lifecycle as a guide to where the most successful businesses did things correctly.

Your journey as a business owner will be fraught with danger but it should be a journey that is interesting and allows you to develop many different skills. Whether you are a small, medium or large business owner, you will at some stage of your business life have many different roles, embrace them and learn from your mistakes and also from your successes. This book has been designed for you to establish and build a successful business.

Introduction

Business owners are in business to take control

When you first start out in business, you need to do everything yourself to keep your business going. You need to be the marketer, strategist, salesperson, manager and even the cleaner. Staying in control of all aspects of your business is vitally important to its ongoing success. As your business grows and develops, it is critical that you are aware of the changes and cycles that it will go through. All businesses go through very predictable and repetitive cycles that are both positive and negative. They are all very important and you need to be proactive and ready to take action when the time comes. I have examined not only what successful business owners have done well, but also where business owners have failed, in order to work out what went wrong. This led me to develop the 'Business Legal Lifecycle' based on my experiences as a lawyer working with over 5200 business owners and their businesses.

The main problem that I observe is that many business owners do not know what they need to do with regards to the legal side of their business. They often do not establish the appropriate structure for their business and do not know when certain legal processes of the business should be undertaken. I developed the Business Legal Lifecycle to guide businesses through what legal steps they need to take and when they need to take them.

Experiences

As a young corporate solicitor during the 2000s it was drilled into me that a business should have every single legal document in place before it starts to trade. Part of this is due to the increasingly litigious nature of our society, and part is due to the commercialisation of legal businesses.

Crossing the t's and dotting the i's before you start trading is critical in order to make sure that you are ready for the challenges that you will face as a business owner.

What we see from many business owners

All too often, a business owner, struggling to get their product off the ground, engages with clients and starts employing staff without having the resources or the time to implement all the necessary steps at the beginning of their journey. Setting up your business properly from day one is crucial as the decisions you make at the start will have huge impacts down the track, and could be the difference between success, failure and even bankruptcy.

The Business Legal Lifecycle was developed to help business owners overcome the challenges and protect yourself from the risks that you will face at different stages of your business' development. When your business is about to transition to the next

phase, it is critical for you to understand what your legal options and obligations are so as to ensure that the transition from one stage to the next is successful.

The aim of the Business Legal Lifecycle

The aim of this book is to demystify the legal processes, explain the different legal practices, and demonstrate why they are necessary through the use of real-life examples. I will also attempt to fight my inner lawyer by doing all of this in plain English! The focus of this book is not specific to any particular type of business and can be used by all types of businesses and business owners.

It should be used by entrepreneurs, existing business owners, accountants, lawyers, financial planners, business mentors, business coaches, mortgage brokers, business brokers, real estate agents and other professionals as a guide to the legal aspects of a business.

It may be that some steps occur in a different order or certain events trigger the phases slightly differently, but from my experience, both as a business owner and as a lawyer, successful businesses generally follow a predictable pattern as presented in the Business Legal Lifecycle.

How to use this book

Before we begin, a word of warning: specific businesses and business owners have requirements that are unique to their particular circumstances. This book is a general discussion on the phases of the Business Legal Lifecycle but it should not replace the advice that you, as a business or business owner, receive from your professional team of advisors which is specific to your own particular circumstances.

I have included many different case studies and examples to show how following the phases in the Business Legal Lifecycle can help your business grow into an asset that can either be sold or be used as a lifestyle business (a business set up to fund your ideal lifestyle as opposed to a larger type business). I have not included any names and some of the details have been changed for privacy. The effect of what happened in each case study or example, whether it is positive or negative, is very real. Ideally, you should read this book from cover to cover at least once and I encourage you to flag chapters that are especially relevant to you and scribble notes as you go. You may discover things that you have done correctly (or incorrectly) and, as you reach each transition to a new phase in your business, I encourage you to continually revisit the book to ensure that you follow the correct processes and seek the appropriate advice from your consultants.

What is the Business Legal Lifecycle?

Starting a new business is an exciting venture for any entrepreneur. I know from my personal experience of starting three businesses that sometimes you get swept up in the excitement and resist getting bogged down in important, but let's face it, often boring, legal matters. There is a long list of considerations that a business owner needs to think about when starting a business, with initial start-up costs typically

being the driving factor behind making decisions.

This is one of the reasons that the Business Legal Lifecycle was developed: to ensure that you are aware that you need to start thinking about implementing the different legal processes from the very beginning.

The different phases of the Business Legal Lifecycle are:

- (a) Phase 1 - Conception
- (b) Phase 2 - Start-Up
- (c) Phase 3 - Initial Clients
- (d) Phase 4 - Bringing on Employees
- (e) Phase 5 - Protecting Intellectual Property
- (f) Phase 6 - Maximising your Business/Bringing in Investors
- (g) Phase 7 - Expansion/Franchising/Licensing or
Buying an Existing Business
- (h) Phase 8 - Estate Planning
- (i) Phase 9 - Investing in Property
- (j) Phase 10 - Litigation and Dispute Resolution
- (k) Phase 11 - Sale of Whole or Part of your Business or the
Listing on a Stock Exchange
- (l) Phase 12 - Retirement
- (m) Phase 13 - Insolvency/Winding up

Each phase of the Business Legal Lifecycle will have a different impact on your efficiency and profitability. Consequently, you may decide not to go through a particular phase, or another phase may present itself earlier for you. Your company may enter into litigation much earlier in its lifecycle, or you may decide to invest in property sooner than others typically do. Some business owners decide never to franchise their business.

The phases of the Business Legal Lifecycle were created as a general guide based on our experience in dealing with business owners and the stages we see them experience during the life of their business. Whether you follow the cycle exactly or not, the book is designed to give you an idea of where your business is currently situated and where it is headed.

A word on contracts

Throughout the book I use various terms that refer to a contract, such as: a company constitution, a lease, agreements with your staff and so forth. These are all forms of contracts which are very important legal documents. There is an old saying in the

legal profession, “in any dispute there is your belief as to the truth, there is the other side’s view on the truth and then the actual truth is somewhere in the middle.” This is especially true if you do not have a contract in writing as each party to the contract will have a different interpretation of the agreement. In the ever-increasingly litigious nature of our society, putting a contract in writing is imperative for any agreement so that all parties can agree upon the terms and conditions.

CHAPTER 9

Phase 9 – Investing in Property

Now that you have a business that is successful and making lots of money, you need to consider what to do with your profits. The worst thing you can do is to squander your hard-earned money on consumer goods or fritter your money away on throwaway items. You need to consider your future and the best way to assure your financial security so that you have the money and time to enjoy your life. You want to have the option to work if you want to, not because you have to.

One strategy that is popular with successful investors over many years is the purchase of real property as an income producing asset. I use the term ‘real property’ here to refer to physical land or other property such as units, in other words, real estate. There are many other investments that you may choose to invest in, such as shares, but the purpose of this phase involves real property as the most appropriate investment for most business owners at this phase of the Business Legal Lifecycle.

There are many different types of property to buy:

- (a) Your own home
- (b) Residential property
- (c) Commercial property
- (d) Industrial property
- (e) Units
- (f) Townhouses

All property has benefits and risks. It is not the purpose of this book to go through each type or to give financial advice. While my personal preference is to invest in property given its long-term history of building equity, return and reward, I understand why people like to invest in other types of assets. As your business generates more profits, you should consider investing in property to ensure that you can build an investment portfolio of passive investments (although property is not *strictly* a passive investment, it is generally considered to be so) that can pay you an income without your active involvement. You should treat your investments as a separate business which is funded by your successful primary business.

This phase is located on the upward trend of the Business Legal Lifecycle as it is all about protecting your future as a business owner. However, I have observed that when a business reaches this phase, you need to consider investing in property now otherwise you will never do so or worse still will not do so properly, which could have a dramatic effect on your ability to set yourself up for the future phases in the Business Legal Lifecycle.

In this section I will discuss the considerations for buying residential, commercial and industrial property, the general process of buying a property, important factors that may impact the buying decision, questions to ask the real estate agent and strategies for selling property.

Important considerations during this phase are:

- What are my goals in life?
- Where do I see myself in 20 to 30 years?
- What is my risk profile and am I willing to take investment risks that may result in losing some of my savings?

Dangerous considerations during this phase are:

- I do not have the money to invest
- I am too scared to borrow
- I can borrow lots and lots of money

9.1 Buying Residential Property

Buying property can be an emotional experience, whether it's a residence in which you intend to live or an investment. It is crucial, however, that any investment purchase decision you make is made with a clear, objective and unemotional mind. Important considerations to keep in mind include:

- The fair and reasonable market value for the property
- How you will pay for the purchase
- The amount you will borrow, the interest rate and fees that will be charged and how you will service your debt
- The potential income your investment is generating currently and in the future
- Rental conditions in the area in which your investment property is located
- Whether the property is positively or negatively geared
- Current renovations needed and future upkeep costs

All of these considerations are important for a person looking at investing in residential real estate. In the purchase of any property there are a range of matters to consider so this list is made up of common considerations that I consider to be relevant when people make such investment

From the Case Files

An example of this type of investment was a client who enjoyed large profits in their successful accounting practice that had a number of

different businesses and turned over significant revenue of over \$5 million per year. The accountant knew that he did not want to work as an accountant forever (even though he was very good at it) and decided to invest his money rather than spending it on consumable items. He bought a large number of residential properties with a moderate rental return so that he was able to generate an income from these properties to be able to pay for his family's lifestyle. He was then able to choose when he wanted to work as he did not need the money but rather was able to have that freedom because he was disciplined in his investments.

9.2 Buying Commercial/Industrial Property

The same considerations apply when buying a commercial or industrial property, as well as additional considerations such as the potential for a greater return measured against the greater risk of vacancy, and the type and location of the property depending on its location. Even where the property has a long-term commercial or industrial business as a tenant, caution should be used to ensure that the tenant does not leave, causing the investment to backfire and costing you more money than it was worth.

Another type of purchase involves the purchase of premises from which your business operates. The obvious advantage is that instead of paying rent, you are building a business asset. This means that you are not paying rent to another property owner and you are building your own property portfolio for your benefit. Of course there are risks in doing this as, if your business fails, you will also lose the income from your business to the investment aspects of your property portfolio business.

9.3 The Process of Buying a Property

The process of buying a property is called conveyancing. Different conveyancing processes are utilised around the world, so always seek local legal advice to ensure that you follow the correct procedures. Whilst conveyancing processes are similar throughout Australia, for the purposes of this book I will discuss the process in Queensland, Australia which is generally as follows:

- (a) Prospective buyers inspect a property for sale to make a decision about whether to attempt to buy the property from the seller
- (b) Ordinarily, a buyer will make an offer to the vendor in a private sale (it can also be at an auction) and the seller then has the choice to accept or reject the offer, or attempt to negotiate a different deal with the buyer
- (c) Once a purchase price is agreed, the buyer and the seller sign a contract for the sale of land, which will include all of the improvements (such as buildings) on the land or in the case of a unit, the unit itself

- (d) The parties each appoint a separate lawyer (or conveyancer) to handle the conveyancing process and the lawyer reviews the contract. They should explain to their client the various obligations and rights placed on their client as a result of signing the contract.

The lawyer (or conveyancer) should also explain what must be done by the buyer in order to ensure that the buyer is able to 'settle' the transfer of the property

- (e) The term 'settle' refers to the time that the buyer actually pays the purchase price to the seller and the seller actually transfers the property to the buyer
- (f) The lawyer (or conveyancer) drafts all of the required legal documents to give legal effect to the transfer of the property. The lawyer (or conveyancer) also ensures that the legal documents are signed, as necessary, by the parties to the transaction
- (g) Ordinarily, the lawyer (or conveyancer) acting for the buyer will also lodge a document known as a settlement notice on the title to the property. The purpose of this document is to prevent the seller from transferring the property to a third party unknown to the buyer
- (h) The lawyer (or conveyancer) conducts searches through numerous government and body corporate records to ensure that the property is as it appears and that there are no problems that need to be addressed pursuant to the terms of the contract.

It is important that you engage a competent and experienced lawyer (or conveyancer) so that they can properly review these searches so that your rights are protected

- (i) The lawyer (or conveyancer) liaises with banks and other parties to ensure that everything and everyone is coordinated for, and on, the day of settlement. Each party's lawyer (or conveyancer) attends the place of settlement and settles the transfer of the property

As can be seen from this very brief outline of the steps to be taken in the conveyancing process, the process is a complicated one with a variety of steps required to ensure that the parties comply with both the terms of the contract and the legislation governing the process.

9.4 Important Factors to Consider when Buying a Property

There are a number of important considerations that a property investor needs to think about before making a decision to purchase. The following is a list of standard elements of the transaction you must consider prior to entering into the contract to purchase a property:

- Entity – what entity or vehicle are you going to use to buy the property? The

various types of entities are discussed in section 2.1. You should take the advice of your lawyer, accountant and financial planner in relation to these matters as there will be significant legal and financial implications depending on your decision

- Purchase price – it is important when buying a property that you consider the purchase price properly; not only in terms of affordability and market rate but also as part of your overall investment strategy
- Deposit – The deposit is the amount that is paid to the stakeholder (usually the agent) and can be forfeited to the seller if the buyer defaults under the contract. Generally, a deposit for the purchase of property in Queensland should be no more than 10% of the purchase price. This is distinct from the deposit required by any bank that is funding your purchase. Depending on the type of property and your history with the bank they may require that you put up your own funds of up to 20% to 30% of the purchase price as a deposit on your loan
- Mortgage – it is important to consider how you are going to be able to afford to purchase the property. If you are going to borrow money from a financier, you must ensure that the contract is subject to obtaining finance approval from a bank or financial institution
- Building and pest inspections – when buying a property, you should always make the contract subject to a satisfactory building and pest inspection
- What do you do if an encumbrance is listed on the contract? An encumbrance is definitely something that you should be concerned about. If an encumbrance is listed, then you should ask the agent for an explanation of what it is about and then seek advice from your lawyer (or conveyancer) as it may adversely affect the property you are buying
- Is the property leased? If it is then you need to ensure that you know when the lease ends and what rent is being received. The question of when the lease ends is important if you want to live in the property yourself. On the other hand, if you are looking to buy an investment property, a lease will affect your return on the investment if the tenant leaves. You should also consider the tenants that are in the property and the bond that is held. This may be important depending on the tenants and how much work may be required to rectify any damage to the property caused by the tenants
- Special conditions – depending on your circumstances or the condition of the property, you may require special conditions to be written into the contract. Some agents will draft their own special conditions; however, it is always advisable that you check these conditions with your solicitor to ensure the effect of the clause is in accordance with your requirements
- Completion – there are a number of factors that determine when the parties settle the contract. It is common practice to settle the purchase of the

property at least 30 days from the contract date

9.5 What Questions are Important to ask the Real Estate Agent?

There are many questions that are important to ask the real estate agent before you sign the contract to buy a property. The number and type of questions will vary depending on the property that is being considered for purchase and also your experience in buying property. Generally, you should ask:

- (a) How long has the property been on the market?

This question is going to give you an idea of how keen the seller is to sell. It is difficult to provide any definitive plan of attack to take from the answer; however, most sellers become more eager to sell their home the longer it is on the market. Once a property has been for sale for six to eight weeks, many sellers (and agents) start to think that their selling price is too high. If the agent states that the property has been on the market for at least six weeks, ask the agent if the price has been already reduced or whether the seller would consider a reduced price less than the listed price (where a listed price is given).

- (b) Will the seller negotiate on price?

This may sound ridiculous, but do not underestimate its power. By asking this question an agent might just give up the information you want to know before you make an offer.

- (c) Why is the seller selling?

Knowing the answer to this question can give you an indication in relation to how eager the seller will be to sell. This may enable you to work out their timetable or deadline for selling. For example, if the agent tells you that they are moving to another location to start work in four weeks, you know they are motivated to sell as soon as possible. Whereas if they are downsizing because the kids have left home and they still have not bought a new place to live, they may be willing to hold out longer to get a higher price.

- (d) Have they had any offers so far and, if so, how much?

This is an important question to find out whether any previous offers have been made, and what amounts have been declined, or offers that have been accepted but possibly fallen through. This can give you an idea of what purchase price the seller will accept, and also give you an indication as to what price other potential buyers believe the property is worth.

- (e) What is the lowest price that the seller will accept?

As an agent acts on behalf of a seller, they will not usually tell you this information, but it is worth asking to see what the answer is. For example, if

an agent says, 'they'll take \$450,000', you know not to make an offer over this amount. Even if they do not give you an exact amount, they are likely to give you an indication as to the price that the seller may be willing to accept.

This is not an exhaustive list of questions; however, from my experience with buying and selling property, these are important questions to ask in relation to the purchase of any property. Other questions may involve information about the property, and whether the agent is aware of any changes in the area that may affect the value or amenity of the property (such as whether infrastructure is being considered or being built that may increase or decrease the traffic flow in the area).

The exact consequences of these types of questions depend on the circumstances and you should always have your lawyer verify any information of this nature that is provided by the agent, as the agent may not be aware of all proposals in the area that may affect your decision to buy the property. Buying property is an important consideration for any person including business owners.

It is important that you seek advice from consultants such as your lawyer, accountants, financial planners, business coaches, life coaches, mortgage brokers, and real estate agents to ensure that you buy the right property and follow the process properly. Having the right agent can make an extraordinary difference: an example is when a client was selling a commercial property with an existing business onsite. The property had been up for sale for a long time with no luck until the new agent appointed by the seller was able to, due to his experience and business acumen, put together a package attractive to investors. The property was sold within four weeks.

9.6 Selling Property (be it Residential, Commercial or Industrial)

Any investment can be sold and there are a number of important considerations that any seller, in particular business owners, need to give to the sale of their properties. The process is similar to that described in sections 9.1 - 9.4; however, when you sell your property you will need to ensure that you appoint the right real estate agent to sell your property. Some important questions to ask are:

- (a) How long has the agent been practising?

The answer to this question will give you an idea about the person that you are appointing but it is critical to remember that just because your agent is more experienced does not necessarily mean that they will sell your property faster or for more money than a less experienced agent. More significantly is whether they have access to competent mentors and their level of training.

- (b) What is the best marketing plan or strategy for my needs?

You will need to ask the agent:

- (i) Specifically, how will you sell my property?

- (ii) What is your direct mail campaign and who are your clients?
- (iii) Where and how often do you advertise?
- (iv) Will you show me a sample flyer?
- (v) How do you market online?
- (c) Will you please provide references?

Everybody has references; even new agents have references from previous employers. So ask to see references and confirm that the referees given are not related to the agent and that they can be contacted with additional questions.

- (c) What are the top three things that separate the agent from their competition?

A good agent will not hesitate to answer this question and will be ready to fire off why they are best suited to sell your property. Every person has their own set of standards, but most consumers say they are looking for agents who are:

- (i) Honest and trustworthy
- (ii) Assertive
- (iii) Excellent negotiators
- (iv) Available by phone or e-mail
- (v) Good communicators
- (vi) Friendly
- (vii) Analytical
- (viii) Able to maintain a good sense of humour under trying circumstances

- (d) May I review documents beforehand that I will be asked to sign?

Generally, when appointing an agent, you will need to sign documents such as:

- (i) Agency disclosure
- (ii) Listing agreement

You should review these documents thoroughly and obtain advice before signing anything.

- (e) How will the agent help me find other professionals?

Let the agent explain to you who they work with and why they choose particular professionals. Your agent should be able to supply you with a written list of referrals such as solicitors.

Ask for an explanation if you see the term 'affiliated' because it could mean that the agent is receiving compensation from one or all of the vendors engaged as a result of the referral, and you could be paying a premium for the service.

- (f) How much does the agent charge?

Do not ask if the fee is negotiable. All real estate fees are negotiable. You should negotiate a fair fee for the service that they are going to provide.

- (g) What kind of guarantee does the agent offer?

If you sign an agency agreement and later decide that you are unhappy with the arrangement, will the agent let you cancel the agreement? Will the agent stand behind their service to you? What is their company's policy about cancelled agreements? Has anybody ever cancelled an agreement with them before? If so, why?

- (h) What haven't I asked the agent that I need to know?

Pay close attention to how the agent answers this question because there is always something you need to know; always. You want an agent to take their time with you to make sure you feel comfortable and secure with their knowledge and experience.

Appointing an agent to sell a property is a big decision and all factors are important. You need to carefully consider all of these aspects and trust your instincts with regards to engaging the right agent to sell your property.

I have advised many clients in relation to the sale of their property. It takes skill to sell property and I know that many different agents will try to say that they can sell property in any circumstances.

One example was a client who wanted to sell his residential property; he asked the questions outlined above and was able to achieve a quick sale of his property due to selecting the right agent. A lot of the selection process will be your gut feelings and in most cases you should trust your intuition based on the answers to the above questions.

9.7 Conclusion

Investing in property is a very important phase in the Business Legal Lifecycle. This phase is all about setting you up for the future by ensuring that your business feeds into the other aspects of your life.

This will give you security going into the future and through the final phases of the Business Legal Lifecycle. It is imperative that any person, including business owners, obtain appropriate advice before embarking on this phase.

Not doing so can have disastrous consequences and can end up costing you a lot of money in the future to get right or fix. I have found that business owners who follow

these steps feel that they are comfortable about the future and ready to tackle whatever comes next. It also creates, in the business owner, a sense of relief that they are setting themselves and their families up for the future.

Once you have the right advice from your various consultants, you will find that you are in a great place to be able to successfully navigate your way through this phase of the Business Legal Lifecycle.

You will then be ready to move onto the next phase, Litigation, knowing that you are starting to be financially secure.

—————

QUESTIONS TO ASK BEFORE YOU PROGRESS TO THE NEXT PHASE:

1. What are your investment goals?
2. Where will these investments take you in the next 20 to 30 years?
3. What type of property do you want to invest in?
4. Do you understand the process?
5. Are you willing to take investment risks that may result in losing some of your savings?

—————

Conclusion

In business you are always learning new systems, procedures and methodologies. This book is all about educating you on the different aspects of your business and when legal processes and considerations should be implemented. The main reason that I wrote this book and developed the Business Legal Lifecycle was to share my experience as a business owner and a lawyer. We built our law firm on the principle of 'Solutions for a Better Life' and all of the work we do is geared towards that goal.

Understanding the Business Legal Lifecycle is not the end point for any business owner; it is the beginning of how to operate your business, how to grow your business, and how to prepare for your future. It is critical that you understand the different phases and times when different legal processes should be followed. It is also critical that you have a basic understanding of a number of legal concepts when in business. I hope that you have appreciated the explanations that I have given in this book and that it gives you, as a business owner, a greater understanding of the legal processes involved in operating a business.

I have used many examples and case studies in this book to illustrate how legal processes work and why they are important. You may find these examples similar to your own experiences or you may find that when you are faced with a similar situation, you can identify a potential problem and fix it before it becomes an issue. No two situations are ever exactly the same but you need to know when to take action at the appropriate time. This will prevent you from continually treading water or, worse yet, being swept away when problems occur.

It is important to remember that in business you will face tough times; that is the nature of business and it is entirely normal. It is *how* you deal with those problems that will determine how successful you are in the future. I also encourage you to read all you can and take in as much advice (but not 'barbecue advice'!) as you can in relation to operating your business. Do not implement everything you read and hear; consider your options and, if you are not sure of which way to go, it is probably best to take the course of a trusted advisor. Running a business is a rewarding endeavour and is something that I am very glad I have been able to participate in.

As you will have gathered from this book it is important that throughout the Business Legal Lifecycle you obtain advice from the right consultants at the right time.

Often lawyers or accountants will try to do too much, or they will not allow the other consultants to do their job. I have tried to also point out the various types of consultants that I recommend that business owners engage with at different times in their business.

I wish you the best of luck in your journey in business and through the Business Legal Lifecycle. If you have any questions, then please feel free to email me at lifecycle@jeremystreten.com.

“The Business Legal Lifecycle is one of those books every business owner should own. Written in plain English with practical advice, no matter where you are in your business journey there are gems of wisdom on every page.”

Adam Houlahan, Author & International Keynote Speaker

Whether you want to have a large company or a small, lifestyle business; you have to pay attention to the legal aspects – right from the start. If you don't take care of your legal obligations and plan for the inevitable problems that will surface, you will be exposing yourself to strain, stress, loss of business and potentially even bankruptcy.

The Business Legal Lifecycle is designed to guide and empower you with the knowledge you need to successfully navigate your business journey.

In this book you will learn:

- Why and when you need to pay attention to the legal aspects of your business;
- How to successfully start up your business;
- What you need to put in place to sell the business in the future;
- Whom you should consult with along your business journey; and
- What you should look at when your business is coming to an end.

Act now and get ready to build a successful business – today!



Jeremy Streten is a successful entrepreneur and lawyer. His passion is to help entrepreneurs and small to medium-sized business owners to succeed in their business so that they can live the life that they want to live. He has challenged and changed the way that many people look at lawyers. With a personal perspective from acting for thousands of businesses and their owners Jeremy often contradicts conventional wisdom.

www.businesslegallifecycle.com



Business