

How to Start a Building Business in Victoria

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Starting your own building company is what many young builders dream of doing from the moment they enter the profession. However there are inevitably many traps for young players, which can turn the young builder's dream into a frightening nightmare. The nightmare can be compounded by the financial ruin which lies in wait if the business venture is unsuccessful.

When starting a building business there are a multitude of things to consider. A building practitioner will need to decide all of the typical questions which confront anybody who starts a business. These include what business structure to choose, how to market the business, how to finance the business, and where to run the business from. There are a multitude of minutiae to consider, for example designing a website, obtaining a logo and letterhead, and purchasing necessary office equipment.

On top of these issues, there are important steps specific to a building business. These include getting to grips with the relevant legislation which

governs building practitioners in Victoria.

Choosing a Structure:

These include how the practitioner will structure their business, whether they will form a company, or remain a sole trader, perhaps registering a business name under which they will trade.

Firstly a practitioner will need to decide how they are going to structure their business. They may wish to do business as a sole trader, using their own name, or perhaps registering a business name by which they will trade. On the other hand many builders may prefer to form a proprietary limited company, or even enter a partnership with one or more other individuals.

The benefits of each option are complex and a decision needs to be made by each individual which is tailored to their specific circumstances. It is advisable to take legal advice from a solicitor who is experienced in commercial and building matters.

In general terms operating as a sole trader is a more simple and straightforward approach. There are less setup costs, and it is less complicated to commence trading. The money which you are paid will be paid directly to you, and this significantly simplifies business administration matters including taxation.

However operating as a company creates a separate legal entity and may entitle builder to the benefits of limited liability. For example if there is a dispute with an Owner, it will be the company which is sued, rather than the builder as an individual. Furthermore, by registering a company, the company name becomes protected, so that nobody else can start a building company with the same name. On the contrary where a sole trader registers a business name, this is not protected unless they take the further step of trademarking that name.

A further benefit is that companies can often expect to pay less tax than an individual. The company tax rate is generally lower than the personal income which most individuals will have to pay in Victoria. However it is important to note that the builder cannot directly pocket the money which is paid to the company. The money becomes property of the company and must then be disbursed to the builder, for example as a salary. This salary then forms part of the builder's personal taxable income.

A common strategy is to begin by operating as a sole trader due to the simplicity, and then to register a company once the business is more mature. The choice of which structure to adopt is very much dependent on the specifics of the proposed business, and builders should take legal advice from a suitable qualified person before choosing a structure.

Licensing Requirements

One aspect of preparation which requires attention is your registration. Part 11 of the Building Act deals with registration of Building Practitioners. It is important to remember that in order for a building company to advertise for and perform building works which require registration, the company must have a director who is a registered building practitioner within the appropriate class or classes.

Pursuant to section 179B of the Building Act, any conduct of a company which does not comply with the Act, is deemed to be a failure by the registered building practitioner who is a director of that company.

Additional Responsibility

When running your own building business, a significant degree of additional responsibility is brought to bear. Particularly as a head contractor, one will be faced with the additional challenges of dealing with Councils and building surveyors directly. Responsibility lies with the head contractor for obtaining building permits, ensuring that the necessary inspections are performed, and ensuring that all the works performed on site are compliant.

For this reason most young builders will not initially take on projects as a head contractor. Once they have come to grips with the rigours of running a business, it may be appropriate to take on jobs as a head-contractor.

It is also worthwhile for a new builder who intends to take on domestic building work to thoroughly read the **Domestic Building Contracts Act 1995**. The Act sets out what builders should and shouldn't be doing when entering a contract for domestic building works.

Non compliance with the Act can leave a new builder open to a claim in VCAT, as well as potentially having implications on their license.

Paperwork and Contracting

Another important step to take when starting a business is to thoroughly plan what documentation will be needed. A business which has poor record-keeping and neglects its paperwork, is exposing itself to significant risk. In the event of a dispute with a client or with a subcontractor, the strength of one's paperwork can be decisive.

Builders should consider what kind of contracts they will need. Many who work primarily on domestic projects may rely on a standard industry contract provided by an association like the HIA or MBA. Others may wish to have their own standard form contract drafted by a construction solicitor. It is important that a builder is very familiar with the terms of whatever contract they are using. By being familiar with the contract, a builder can make sure that they comply fully with the relevant contract terms, and will also know their rights in the event of a dispute.

It is also advisable to have a suitable solicitor prepare standard form contracts which can be used when a builder engages a subcontractor. This is particularly important for builders who are less experienced, as one dispute with a subcontractor can derail the business at an early stage.

It is also advisable to put in place a strict procedure for record keeping. Each job should have its own file where all documents are kept. Just as lawyers keep records on a file, builders should try to maintain all correspondence, as well as invoices, plans and permits. All of this documentation can be critical in the event of a dispute with an owner or a subcontractor. Particularly where there are variations, extension of time requests, or periods of suspension of building works, it is important that this is all documented in writing, and as per the relevant contract. These are often key battlegrounds in a dispute with an owner.

Join an Industry Body and Network

As a young builder starting out in business, one should accept all the help and advice they can access. A good place to start is through obtaining membership with a builders' association. In Victoria, the obvious places to start are the HIA and MBA.

These organisations can provide a lot of assistance to builders, and arrange a number of events which create networking opportunities, as well as seminars which allow young builders to access useful advice.

Conclusion

There is a lot for a young builder to consider when forming their own business. Perhaps one of the most important steps is a very thorough business plan. A good business plan needs to map out all steps necessary to be taken, and should include a budget to ensure that one has enough capital to start the business. Once a builder has identified all of the necessary steps, it is advisable to methodically prepare to open for business. At this stage it makes sense to take expert advice from a construction solicitor, as well as an accountant or financial planner.

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