

**BUYING A BUSINESS IN FLORIDA
LETS YOU LIVE IN FLORIDA**

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Many persons who purchase homes or condominiums or time shares in Florida find it harder and harder to leave the state at the end of their intended stay. Fortunately, the United States and the United Kingdom have a treaty of friendship and commerce which allows inhabitant citizens of the British Isles in Europe to live and work in Florida through the purchase of a business as an investment under the U.S. Immigration laws.

Generally speaking, an E-1 visa is available to treaty traders or to their executive or managerial or specialized knowledge employees having the same nationality as the trader engaged in the substantial trade of goods and services between the U.S. and the treaty country of the alien.

An E-2 visa is generally available to investors or the executives/managerial and special-knowledge employees having a nationality of a treaty country who has made a substantial investment, generally an investment of at least \$100,000, in an active commercial enterprise which is not a marginal one for the purpose of employment opportunities for U.S. citizens, permanent residents, other employment authorized workers.

For persons who have a business in England, L-1 visas may be available. L-1 visas may be a subsequent basis for a green card, an E-1 or E-2 cannot.

If you invest as little as \$500,000 in a new enterprise resulting in 10 new jobs, then you can qualify for an EB-5 green card. This is in addition to the regional centers for EB-5 green cards which are also available in Florida.

Again, close consultations with your lawyer is a must when determining what type of business to buy in Florida in order to qualify for an appropriate investment visa.

FORMS OF BUSINESS ORGANIZATION

As in the United Kingdom, the basic types of business organizations found in Florida are the sole proprietorship, partnership, whether general or limited, corporations, limited liability companies (LLC) and what are called "S" corporations under U.S. tax law. Ordinarily, the investor will determine the type which is most desirable on the basis of a number of factors such as the need to limit liability and the need for protection of personal assets, the need for raising of capital, the need to take advantage of U.S. tax law and the U.S.-U.K. tax treaty, the number of owners in the business and the types or shares of stock to be issued and the requirements for direction and control of a treaty investor enterprise which may be set up.

Businesses operating in Florida are subject to federal, state and local regulations.

Under federal regulations, all businesses must obtain from the Internal Revenue Service an employer identification number within a prescribed time period. Additionally, companies and businesses and properties which are purchased by foreign investors must file various reporting statements. These can be done by your lawyer or accountant. All businesses must file Federal Income Tax Returns.

Businesses organized under the corporate form, whether a corporation or Limited Liability Company (LLC), must prepare, execute and file their articles of incorporation or organization in compliance with Florida company law. The articles must be filed with the necessary fees and taxes. Corporate names must be checked for availability.

Businesses which use a name other than the owner's name or the actual company name, such as a fictitious name, are required to follow a registration procedure under Florida law, which includes publication and registration with the Secretary of State.

Businesses that sell, lease or rent certain property must collect sales taxes. These businesses must register with the Department of Revenue and obtain a sales tax number.

Businesses with more than three employees are required to carry workers' compensation insurance.

The State also licenses professionals, such as accountants, lawyers, engineers and physicians. Also, it regulates day care centers, certain health care facilities and charitable organizations.

County and local occupational licenses may also be required for most businesses. One or both licenses may be required depending upon the location of the business. You can obtain specific information about local, state and federal regulations from your solicitor or U.S. lawyer.

Both cities and counties regulate both building and zoning laws, zoning ordinances, restrictive location of businesses to designated areas, and restrict the types of business or activities that can be conducted in various zoned areas.

PURCHASING THE BUSINESS

When purchasing a business in Florida, you can purchase the business in conjunction with the purchase of the land and the building itself, or as a separate purchase without the land and building, but with a lease on the business premises. Business purchases without purchase of the land and building itself cannot be conducted by title companies and can only be conducted by lawyers.

Most business purchases in Florida are handled through business brokers who are registered with the Florida Real Estate Commission. Brokers are generally divided into seller's brokers and buyer's brokers. You should inquire as to whether your broker is a broker acting on behalf of the seller or if the broker will be a buyer's broker. The third type of broker is a transaction broker who does not represent the buyer or seller. We recommend a buyer broker.

There are many tax and legal considerations in buying a business in Florida. It is not recommended that anyone sign an agreement to purchase a business without having his attorney review and approve the same. There are too many horror stories of people not getting what they have purchased. Your lawyer can take steps to protect you from unscrupulous sellers.

Generally, the procedure for purchasing a business and preparing an agreement to purchase a business is similar to purchasing real estate with the exception that a business without the attendant building and land does not qualify for

title insurance.

Before signing any agreement to purchase a business, you should review the agreement with the attorney to determine if it is legal and enforceable. You will also need to discuss with your attorney, the availability of any immigration or visa benefits on the business being purchased. Your attorney and you should determine if the business can qualify for an E, L or EB-5-visa. If so you can subject the purchase to an E-2 visa contingency so you get your money back if no visa is issued. Only lawyers can hold money in escrow in Florida.

Your attorney can also prepare the appropriate legal documents to insure that you have full ownership of the business purchased. Your attorney can also advise you on the legal benefit of forming a corporation to buy the business versus other forms of ownership.

If the business has not been in existence for at least one-two years, you may be required to submit a detailed business plan in order to obtain an appropriate visa. Your attorney can assist you in obtaining the appropriate professional assistance in preparing a business plan.

Prior to purchasing a business, your attorney can help you review corporate books and records from the inception to determine the current ownership and legal standing of the business, and whether the business has any outstanding loans or debts or liens. Your attorney should also carefully review the list of equipment and the proposed lease and other contractual warranties usually given by the seller. Your attorney can also discuss with you the use of escrow accounts and contingent payment plans and the rights of indemnities and setoffs. Your attorney can also review with you your capital requirements and expenses for the closing and who will share the expenses of the closing.

Your attorney, your accountant and your business broker can work together to analyze the purchase price and then react the determination of a fair value for the business being purchased.

Your attorney can also work with your accountant to make sure that the appropriate company financial statements are made available to your accountant for your review prior to

closing.

There are various techniques of valuation of companies which can measure the value of a company in terms of its own capitalization of income, its discounted cash flow, replacement costs for equipment or book value of assets. You need to know which assets and inventory are included and what are not included in the sale.

Your attorney can also assist you with drafting an appropriate covenant not to compete and can also advise on tax implications regarding good will and going concern value and what items may be depreciated or amortized under U.S. tax law.

Buying property from abroad is a long-standing tradition in the U.S. The U.S. encourages foreign ownership and does not prohibit foreign currency exchanges. The British pound sterling still remains very strong against the U.S. dollar. Many buyers have been highly successful in it. But there are pitfalls and there can be problems. By abiding by the above guidelines, you will go a long way toward ensuring that your Florida business purchase is prudent and profitable.

Mr. Lavigne is a partner with the Florida based law firm of South Milhausen, P.A. Mr. LaVigne has represented British buyers of Florida homes and businesses for over 30 years.. The firm is a full-service law firm handling all aspects of international business, property law, business law, foreign investments, tax law, contract law, and immigration law. Mr. Lavigne is a Florida Bar lawyer, certified in International Law.

Mr. Lavigne is past president of the Orlando World Trade Association and has written a number of articles on international, property and immigration law. He serves as an international business consultant for the University of Central Florida Small Business Development Center. He is also a member of the Florida British Chamber of Commerce. He has been practicing in Orlando for over 25 years and has been the recipient of various honors and specialized degrees. He holds law degrees from both the University of Florida and the Notre Dame London Law Centre.

N.B. This guide is not intended to answer all questions. Please consult your lawyer before buying!

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