



Briefings

VOLUME 2, ISSUE 3
SUMMER 2008

TN TOP 5

Important Legal Steps to Starting a Business

Starting your own business can be both exciting and daunting. The attorneys at Thomsen & Nybeck can assist you in navigating many of the initial steps, including the preparation of the following:

1. Articles of Incorporation / Articles of Organization and Bylaws. An entity's Articles set forth the basic information about the entity: its name, the number of authorized shares, the name and address of the registered office and agent, and the names of each incorporator/organizer. The Articles must be filed with the Secretary of State. The Bylaws set forth additional rules and regulations governing the operations of the entity and the relationships among the owners, board members and officers/managers of the entity.

2. Shareholder/Member Agreement. When an entity has more than one owner, future disputes may be mitigated by deciding from the start how to handle certain events, such as restrictions on an owner's ability to sell his or her stock, the death of one of the owners or an owner's decision not to continue in the business.

3. Employer identification numbers (EINs). Entities are required to have their own EIN, even if the owners plan to report the business's

income on their individual income tax returns. A new entity must obtain both federal and Minnesota EINs. When applying for a Minnesota EIN, the business will also apply for any other required state tax accounts (e.g. unemployment insurance, workers' compensation insurance, franchise tax).

4. Insurance documents. Find out what types of insurance – and what levels of coverage – are common in your industry, including any insurance required by law. Apply for and obtain the necessary insurance before your business gets underway to make certain you are adequately protected from the start.

5. Bank account in the name of the entity. Especially for entities owned by only one or two persons, it is vital that the business's funds and records be maintained separately from the owners' personal records.

--
Ivory Ruud contributed to this article. Ivory works in the transactional law section of the firm and focuses her practice on estate planning, real estate law, business law and taxation. Contact Ivory at iruud@tn-law.com or (952) 835-7000.

Resolving a Dispute: Which Option is Best For You?

Going to court rarely rates high on the "fun things to do in your spare time" surveys. Although there are times when going to court is the best and only option, today business owners have many alternative dispute resolution options to consider when settling a case.

You can't predict time, cost or outcome in any dispute resolution, but this holds especially true if you are headed to court. The other party may file a counter claim adding costs above and beyond what you anticipated. You also have no way of knowing how the other party will react and documents you think could win your case may be inadmissible in court. There is also a chance it could move from state to federal court prolonging the case. Although going to court may be the best solution given the circumstances of your situation, other forms of dispute resolution to consider are:

Mediation – A trained mediator is hired to act as an impartial third party to help the parties involved in the dispute compromise and reach a mutual agreement. Since the parties ultimately reach the agreement, it can be tailored to meet their needs outside the confines of the law. If you are involved in a dispute and believe both parties could work together with the help of a mediator to reach a fair and mutual agreement, mediation can be the most cost and time effective and give you an amicable means of resolving your dispute.

Arbitration – Arbitration hearings differ from mediation in the fact that evidence is presented to the arbitrator, typically by the parties' lawyers, and the arbitrator makes a legally binding decision. The decision is not negotiated by the parties and once the parties enter the arbitration process, they must abide by the arbitrator's decision. Arbitration is a good alternative for those cases where

going to court would not be cost effective (typically any dispute regarding \$30,000 and under), but where the parties would not be able to reach an agreement themselves through the mediation process.

Mini-Trials – Mini-trials are a means of settlement dispute where the parties present their evidence to a panel of peers outside of the courtroom. It differs from mediation and arbitration in the fact that the panel of peers is not impartial and is made up of representatives from each party plus one neutral official. Their decision is not legally binding like arbitration and the case may proceed to trial if the parties do not agree on the decision. Often, mini-trials are conducted during pending litigation to see if the dispute can be settled outside of court. Mini-trials offer an opportunity to have your case heard by experts, but since the outcome is non-binding it gives you the option of moving your case forward.

You may choose to go to court to send a message; for example, a business goes to court to uphold a non-compete clause or to set a precedent. You may also choose to go to court to establish a principle; many landmark cases involved very little money. There is no black and white answer to which method of dispute resolution will work best. You need to consider the parties involved, time and money you're willing to spend defending your case and what your main goal is in resolving the case. Sitting down and talking with your attorney about your options is a first step in deciding what form of resolution you want to pursue.

--
Mark Ohnstad contributed to this article. Mark practices in the areas of General Civil Litigation, Commercial Litigation, Insurance Litigation, Employment Law, Personal Injury and Family Law. Contact Mark at mohnstad@tn-law.com or (952) 835.7000.

**CASE STUDY: *Protecting House and Home —
The Anatomy of a Construction Defect Case***

Many owners of the brand new townhomes at Egyptian Shores* thought they found utopia. The large, upscale homes were situated so each had a view of one of the numerous water features designed into the landscape of their beautiful community. Unfortunately, problems began to plague the units. Windows not only leaked, but some began to buckle and break. Several patios and decks began to shift, or even slide toward the very shores on which the homes were built.

As the years passed, some owners began to feel sick from what they believed were increased moisture and mold levels inside their homes. Other owners tried to sell their homes, unaware that any problems existed, only to have their buyers say that inspections revealed rampant moisture damage. The Egyptian Shores Board of Directors enlisted Thomsen & Nybeck, P.A.'s construction defect litigation team, headed by Dave McGee, Chris Renz and Matt Drewes, to help them.

The team quickly retained an expert qualified to examine the varied, complex and seemingly endless problems facing the association. With the expert's assistance, they developed a protocol of moisture tests combined with other inspections to evaluate and document defects.

The physical testing and investigation of such a case can be arduous. The association sued the developer and certain individuals who were in charge of the construction, and those parties soon pulled dozens of others into the case. Soon, 20 parties were involved and searching for any weakness in the case. The challenges continued: A frigid, mid-winter inspection of the site was required. "I don't think I've ever been colder in my life," recalls attorney

Deb Newel. The necessary testing and analysis continued for months. The team also was called upon to defend the association's investigative efforts against an emergency motion to stop them. On just two business days' notice, they responded, ensuring the investigation continued just one day later than planned.

The team later formulated a deposition strategy designed to counter the arguments the defendants were likely to assert. More than seven depositions were taken and the strategy proved effective. The team used the testimony Matt Drewes elicited during those depositions to successfully defend against nine motions for summary judgment brought by eight different parties seeking the dismissal of all or a part of the case. Egyptian Shores emerged from these motions with all eight of its causes of action surviving.

After a full day of mediation, the parties remained far apart, largely because the association's anticipated repair costs were so significant. With a trial appearing inevitable, the Thomsen & Nybeck team drew upon the knowledge gleaned from its uncommon successes in obtaining favorable trial verdicts in construction cases, and began preparing to present the case to the jury. In the end, however, the resolve of Thomsen & Nybeck and its client yielded a substantial settlement.

The case of Egyptian Shores resulted in a happy ending. The association received its recovery and made arrangements to complete all of the major repairs required on its members' homes using those funds. The residents of Egyptian Shores have now begun the process of restoring their homes and their dreams.

*Names were changed to protect the client's confidentiality.

—
Matt Drewes contributed information used in the preparation of this article. Matt practices in the areas of Commercial Litigation, Community Association Law, Construction Litigation, Creditors Remedies and Debtor/Creditor Law, Real Estate Litigation and Insurance Litigation. Contact Matt at mdrewes@tn-law.com or (952) 835-7000.



Jack Carlson (pictured at left) was recognized as one of the Best Lawyers in Minnesota in the area of Tax Law by Minnesota Monthly magazine as showcased in the June 2008 issue.

Chris Renz and **Matt Drewes** co-authored the article "Bulk Cable: Not an Exclusive Relationship Any Longer," which appeared in the July/August 2008 issue of Minnesota Community Living – the official publication of the Minnesota Chapter of the Community Associations Institute. In that same issue, **Matt Drewes** authored the article "Did Your Developer Plant Strong Financial Roots? A Primer on the Developer's Obligations to a New Association."

Brad Boyd, Chris Renz, Bill Sjöholm, Ivory Ruud, Ryan Wood, Natalie Walz, Matt Drewes and **Nate Knoernschild** participated as a team in the Medtronic TC 1 Mile held in downtown Minneapolis on May 8, 2008. Team T&N finished eighth in the corporate challenge portion of the race. (Photo below.)

Deb Newel married Greg Hrcirik on June 20, 2008.



Bill Sjöholm (pictured at left) was elected to the office of Vice President of the Board of Directors for Central Minnesota Legal Services.

Thomsen & Nybeck was proud to sponsor the driving range and provide bottles of water to golfers as they prepared to tee off at the Minnesota Chapter of Community Associations Institute's Second Annual Golf Tournament, which took place June 16, 2008. Thomsen & Nybeck attorney **Matt Drewes**, along with three professionals from the Oakdale accounting firm of Burke, Wheeler & Assoc., P.A., won the tournament.

Thomsen & Nybeck congratulates its law clerk **Maureen Alvino** on her recent graduation from William Mitchell College of Law. Maureen was a member of the William Mitchell Law Review.



ATTORNEYS

This newsletter is presented to you by the attorneys of Thomsen & Nybeck, P.A.

- | | |
|------------------------|-----------------------|
| Jack K. Bouquet | Mark G. Ohnstad |
| Brad J. Boyd | Dennis M. Patrick |
| Jack W. Carlson | Christopher P. Renz |
| Matthew A. Drewes | Ivory L. Ruud |
| Gordon V. Johnson | Gretchen S. Schellhas |
| Thomas R. Kelley | William E. Sjöholm |
| Nathan J. Knoernschild | Donald D. Smith |
| Robert D. Lucas | Natalie R. Walz |
| David J. McGee | Ryan J. Wood |
| Debra M. Newel | |

Cover page photo credit:
**Minnesota State Fair
Lawrence Sawyer for
iStockphoto**

PRACTICE AREAS

Thomsen & Nybeck has in-depth experience and knowledge in the following practice areas. Call us today at (952) 835-7000 if you have a matter we can help with.

- | | |
|--------------------------------|-------------------------------|
| Business Law | Litigation |
| Construction Defect Litigation | Personal Injury |
| Criminal Law | Real Estate |
| Employment Law | Taxation |
| Estates, Wills and Trusts | Townhome &
Condominium Law |
| Family Law | |
| Financing | |

“Large enough to be effective.
Small enough to care.”