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Considerations for a New Business Enterprise

By Christine A. Kubota



What if you have a grand idea and you wish to put it into motion? Have you created the prototype of your product or do you need funding? Are you providing goods or services? Whatever stage you may be at in your venture, we hope you will consider these issues as you solidify your thoughts and take action:

1. Whether you are applying for a small business loan or not, consider writing out a 1-3 year business plan. By memorializing your thoughts, you will be better able to see what is missing. What are your immediate goals? And your long-term goals? What are your costs and income projections?
2. Create an organizational or work flow chart to visualize how things will get done and the timing for each sector of work or services to be rendered. How much must be done, by when and who will follow-up or keep track?
3. Will you form a company or work with a partner? How much will you and/or your partner initially invest? How will you locate the balance of funds needed? Are you able to invest funds as they become necessary? If so, to how much? Will all partners contribute in the same way?
4. Whose idea is it? Is there something to protect? Are you sharing it with the others? Will compensation be split accordingly? Who will make the decisions? Will others need to consent? Will there be personal liability?
5. What if the partners disagree - is there a mechanism to break the deadlock? The operating company may suffer if a majority shareholder does nothing. This can be addressed in the bylaws; operating agreement or shareholder agreements.
6. Consider the need for formalities and annual costs.
7. What happens if you pass away? Should your interest be in a trust or an irrevocable trust? Who are your heirs - will they be able to operate the business? Do you wish to profit share with your employees?

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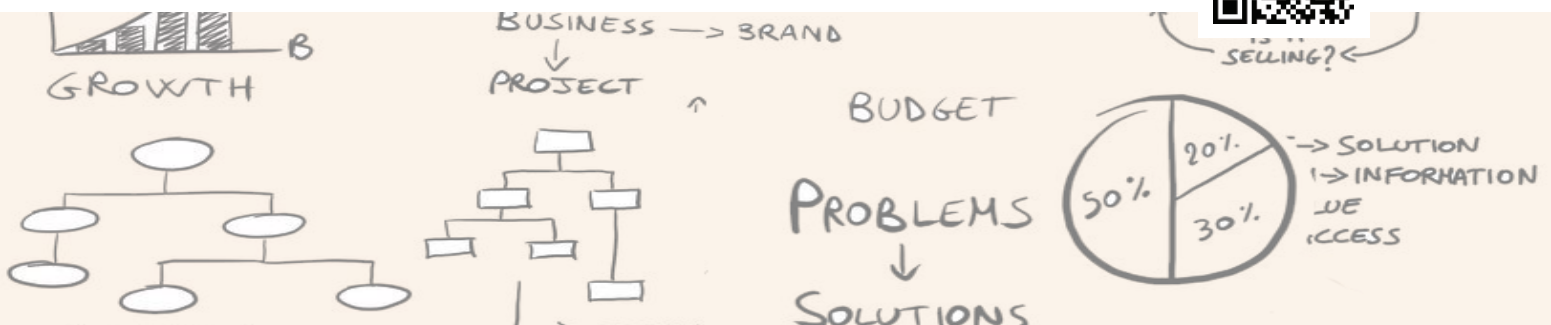
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8. What government filings are required? Do you need a license or special permit? What about government approvals? Do you have an ingredient list?
9. Should you file a service mark, trade name or trademark? Should it be local or national? What labels will you use - what will they say?
10. What agreements and contracts do you need? How will you pay whom for what? For how long a term? What are you buying? Can it be returned? Who bears the risk for shipping? Are there rules for customs and duty?
11. What are your insurance needs and limitations? Does your lease or other arrangement require special coverage? Can you get it?
12. Do you have an employee policy? What are your rules? How are tips handled? Will you retain employees; consultants; independent contractors; or subcontract out work? Are there immigration issues? Will you be seeking foreign funding?
13. Will you place ads? Where? And what will it say? Who is your target market? Will you hire a marketing consultant or ad agency? How will you enter a new market?
14. Do you need a distributorship agreement? Will it be exclusive? Are you licensing your rights to someone? Will you need to set up a franchise?
15. What other filings do you need? Tax numbers; department of commerce filings; labor numbers; liquor license; building permits; department of health inspections; or a PUC license?
16. Where will you be? Office, home or virtual? What Social media will you use? Will you set up a website?
17. Create a team - Do you need an:
Accountant/Insurance Broker/Real Estate Broker/Attorney/Engineer/Architect/Marketing/Public Relations/
Distributor/Trucking Services/Escrow Company/Appraiser/Title Company/Business Evaluator/Customs
Broker Etc.
18. Set a budget. Open a bank account – check different types of accounts.
19. Don't give up!

There are so many different considerations for each investment project but we hope this list will help you as a guide to work through the maze of confusion. Many of these questions are new to many of our clients but they are important to consider when forming a new business enterprise or structure. Although it may first sound like a list of obstacles, you will be glad that these issues (and more) were addressed before vs. later when trouble or confusion comes your way? Be ready to undertake anything and don't lose sight of what you wish to accomplish.

Have a good understanding of where you are and what you need and where you want to go. Adjustments can be made along the way. The most important thing is to get that grand idea into motion!

For more information on this article, please call Christine at 531-8031 ext. 613, email her at cak@hawaiiilawyer.com or scan the code with your smartphone.



Damon Key at the ABA Annual Meeting, New York

This past August, Damon Key lawyers made their presence known at the American Bar Association's Annual Meeting in New York City. The highlight was the Chair-Elect's Reception, sponsored by the firm on a New York rooftop, which celebrated Damon Key's Robert Thomas becoming Chair of the ABA's Section of State and Local Government Law. Several Damon Key attorneys and their families made the trip from Honolulu to New York to celebrate, including Michael Yoshida, Mark Murakami, and Matthew Evans. A large contingent from the Hawaii State Bar Association also attended, including past HSBA Presidents Cal Young, Richard Turbin, and Alan Van Etten.

The State and Local Government Law Section of the ABA is focused on municipal and state law issues, and covers an incredible range of topics, including land use and zoning, environmental law, eminent domain, municipal financing and bankruptcy, government employment, First Amendment, education, disaster preparation and security, and tribal law. Robert has been active in the Section for over a decade, and has served as the Continuing Legal Education Director for the Section, and the Chair of the Eminent Domain Law Committee. Other Damon Key lawyers are active in the Section: Matt Evans is a past co-Chair of the Section's Young Lawyers Committee, and Mark Murakami served on the Section's Nominating Committee.

The Annual Meeting is the yearly gathering of the nation's lawyers, and includes hours of educational opportunities. Among the sessions which the State and Local Government Law presented were programs on municipal disaster preparedness and resilience, both timely topics in light of the subsequent storms that hit Puerto Rico, Florida, and Texas.

Robert also presented a continuing legal education session on the U.S. Supreme Court's most recent property law case, *Murr and Beyond: Implications for Regulatory Takings*, a panel which included the two lawyers who argued the case before the Court (John Groen of Pacific Legal Foundation, and Wisconsin Solicitor General Misha Tseytlin). Robert's portion of the talk was recorded, and is posted here for those who may want to listen: <http://bit.ly/2hHkO1I>.

There was time for other activities, of course, including baseball, a ferry trip, and an insider's visit to the World Trade Center's Federal Emergency Management Agency office, led by a Section colleague.



1. Tamara Edmonds-Askew, Esq., Director of the ABA Section on State and Local Government Law, and Robert Thomas, Chair of the Section. Damon Key sponsored the reception. 2. Calvin Young, past President of the Hawaii State Bar Association, Mrs. Young, and Damon Key's Mark Murakami. 3. Robert was presented with the gavel by his Section colleagues. 4. Robert giving a brief talk at the reception. 5. Mary Ann Renfer (Mrs. Yoshida), and Damon Key's Michael Yoshida, both of whom made the long trip from Honolulu to celebrate. 6. New York's bridges, at night.

2017 Legislative Update

By Christopher J.I. Leong



The Hawaii State Legislature concluded its 2017 Regular Session with 217 bills becoming law. Here are a few of the noteworthy new laws.

Withholding Tax (Act 7).

Effective January 1, 2018, all employers in the state will be required to file their returns of withheld income tax quarterly rather than monthly. The legislature did not change the payment requirements, however, which means that employers whose withholding tax liability is between \$5,000 and \$40,000 annually must continue to remit withheld tax on a monthly basis, and those with more than \$40,000 in annual tax liability must remit on a semi-weekly basis.

Condominiums.

The legislature passed several bills this year amending various aspects of the condominium law. Act 71, for example, requires condominium boards and resident managers to make available to unit owners, upon request, copies of contracts (including the written job description and compensation amount) between the association and any person retained on-site to manage the operation of the property. Act 73 clarifies that for purposes of voting by proxy, if a proxy form is returned to the board with no box checked or more than one box checked, that proxy shall be counted for quorum only and cannot be used for any other purpose. (Act 101 also establishes this rule for non-condominium planned community associations.) Act 81 requires boards to permit unit owners to participate in board meetings (except when the board goes into executive session), pursuant to owner participation rules adopted by the board. The same act also requires notices for board meetings to include a list of items expected to be on the meeting agenda, and also provides that board members may violate their fiduciary duty to the association if they violate the mandatory mediation and arbitration requirements contained in the condominium law. Act 190 also makes it unlawful to retaliate against a unit owner, board member, managing agent, resident manager, or association employee who makes a complaint or report alleging a violation of the condominium law or the condominium's governing documents.

Affordable Housing.

The legislature also passed a number of bills aimed at the continually pressing need to create, maintain, and expand the stock of affordable housing units in this state. Act 54 allows the Hawaii Housing Finance and Development Corporation to exempt the construction of certain affordable rental housing projects from general excise tax and use tax costs. Act 159 authorizes qualified nonprofit housing trusts to repurchase affordable housing units developed with government assistance when the unit owner seeks to sell the unit during the applicable restriction period and the HHFDC waives its first right of refusal to repurchase the unit. Act 166 allows an extended family member or hanai family member to act as a co-mortgagor in assisting an otherwise qualified resident in securing a mortgage to purchase an affordable housing unit from the HHFDC.

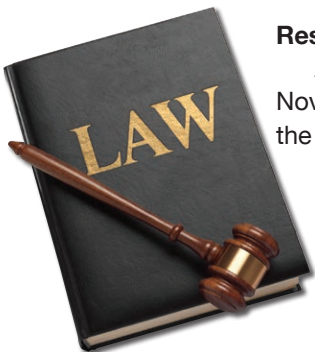
Family Law (Act 113).

Act 113 enacts the Uniform Family Law Arbitration Act, which permits the use of arbitration to resolve certain family law and child-related disputes, including child custody, visitation, and child support. It may not be used, however, in cases of divorce, termination of parental rights, the granting of adoption or guardianship, or in proceedings to determine the status of a child in need of protection.

Residential Rental Agreements (Act 179).

Act 179 applies to all new residential rental agreements and all renewals entered into on or after November 1, 2017, and provides that where the rental agreement provides for a late charge payable to the landlord when rent is not timely paid, such late charge shall not exceed 8% of the amount of rent due.

For more information, please call Christopher at 531-8031 ext. 619, email him at cjil@hawaiilawyer.com or scan the code with your smartphone.



Winning the Green Card Lottery: 2019 Diversity Immigrant Visa Program

By Kelly Y. Uwaine



The Department of State has released the instructions for the 2019 Diversity Visa (DV) program. Online registration for the 2019 DV Program will open on Tuesday, October 3, 2017 at 12:00 pm (EST) and will close on Tuesday, November 7, 2017 at 12:00 pm (EST). There is no cost to register for the DV program.

The DV program makes 50,000 immigrant visas available through an annual lottery. Its purpose is to assure a diversified immigrant population by awarding visas to applicants from countries with low rates of immigration to the US during the last five years. People from countries with high US immigration rates are not eligible. The program was created by the Immigration Act of 1990. (Some trivia: it was also called the “Schumer Program,” sponsored by Chuck Schumer.)

“Lottery winners” are determined through a randomized computer selection. DVs are distributed among six geographic regions, and no single country may receive more than seven percent of the available DVs in any given year. This means that each country may receive up to 3,500 DVs each year. (Additional trivia: Bangladesh became ineligible in 2012-13 because over 50,000 Bangladeshis immigrated to the US during the previous five years. It was the biggest user of the DV program, averaging 3,000 DV winners a year. When it became ineligible, the odds of winning the lottery shot up for DV entrants from other countries.)

To be eligible to register for the DV program, you first must be born in a country where natives qualify to enter. If you were in an ineligible country, you may still be eligible to enter if your spouse was born into an eligible country or if your parent was born in an eligible country and your parent was not a legal resident of the ineligible country you were born in.

For the 2019 DV program, the natives of the following countries are not eligible to apply as more than 50,000 natives of these countries immigrated to the US in the previous five years: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Note that persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible to apply.

Winning the lottery does not guarantee anyone a green card. Each “winner” gets a number which secures his or her place on the winners’ list. Immigrant visas or green cards become available as one’s number approaches the top of the list. Winners must also prove they meet the education or work experience component. You must have at least a high school education or its equivalent or two years of work experience within the past five years in an occupation that requires at least two years of training or experience to perform.

People wishing to register can do so at dvlottery.state.gov. Remember to list your spouse and all unmarried children under the age of 21 on the entry form. You will receive a confirmation number that you must safeguard. Starting on May 1, 2018, 2019 DV registrants can use that number to check their status on the DV program’s website at dvlottery.state.gov.



**For more information on this article,
please call Kelly at 531-8031 ext. 614,
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scan the code with your smartphone.**



Damon Key Leong Kupchak Hastert

Personal Preparedness Checklist

By Diane D. Hastert



Everyday life is complicated. When we're unable to manage our affairs, become impaired or die, someone has to unravel the puzzles we've created. This checklist will help minimize delay and confusion.

Everyone should have current estate documents, which may include wills, trusts, durable powers of attorney, and advanced health care directives. They may also include POLST forms (Provider Orders for Life-Sustaining Treatment) prepared with your health care provider.

When you complete this checklist, we recommend: (1) you not save the document on your computer; rather, you save it to a thumb drive or other external storage; and (2) you keep one copy in your home safe or other secure storage and one copy in your attorney's office. Be sure a responsible individual knows who your attorney is. A fillable version of this checklist is available at <http://hawaiiilawyer.com/publications/personal-preparedness-checklist>.

PEOPLE

- o Who should be notified when you are incapacitated or die?
 - For each, list contact information¹ and relationship to you.

PERSONAL IDENTIFYING INFORMATION

- o Birth certificate – where is original or copy?
- o Passport:
 - Issuing country?
 - Number?
 - Location?
- o Social Security:
 - Name?
 - Number?
- o Drivers' license:
 - Issuing state?
 - Number?
- o Global Entry number?
- o Military Identification number?
 - Location of DD-214 entitling former military to burial benefits?

ATTORNEYS

- o List each attorney and her/his contact information.
- o Location of current estate documents?

ACCOUNTANT/TAX PREPARER

- o List each accountant and tax preparer and their contact information.
- o Location of copies of last 5 years' tax returns?

FINANCIAL ADVISORS & INVESTMENTS

- o List each financial advisor and her/his contact information.
- o List each investment account and account contact information.
 - For each, provide log-in identification and password.
- o List all other investments and business interests?
 - o Location of inventory of investments, assets, liabilities, etc.?

BANK/CREDIT/FINANCIAL INSTITUTION ACCOUNTS

- o For each account:
 - Name of institution?
 - Branch where account was opened?
 - Name(s) on account?
 - Number of account?
 - Type of account?
 - Log-in identification and password?
 - PIN number?

REAL PROPERTY

- o For each interest in real property:
 - Location/address?
 - Tenants by the entirety, tenants in common or ?
 - Other owners on title?
 - Location of copy of deed?

SECURED STORAGE

- o Safe deposit box:
 - Location?
 - In whose name(s)?
 - Location of key?
- o Safe:
 - Location?
 - Combination?
 - Location of key?
- o Storage Unit:
 - Location?
 - Access code?
 - Combination?
 - Location of key?

INSURANCE POLICIES

- o For each policy:
 - Type of policy?
 - Name of carrier?
 - Policy number?
 - Contact information?
 - Location of copy of policy?

AUTOMOBILE TITLE

- o For each:
 - Make/model/year?
 - Location of vehicle/keys?
 - Location of original title?

CELL PHONE/TABLET ACCOUNTS

- o For each:
 - Type of device?
- Telephone number associated with device?
 - Account holder?
 - Carrier?
 - PIN/Password?

MORTGAGE/LONG OR SHORT TERM DEBT

- o For each:
 - Holder of debt?
 - Contact information?
 - Location of promissory notes, mortgages, etc.?

CHARGE ACCOUNTS

- o For each, list:
 - Name of issuer?
 - Name on account?
 - Account number?
 - Contact information?

RECURRING OBLIGATIONS/MEMBERSHIPS/SUBSCRIPTIONS

- o For each, list:
 - Name of payee?
 - Whether paid automatically or manually?
 - If automatic, contact information for cancellation/modification.

DOCTORS

- o For each, list:
 - Name?
 - Contact information?

FUNERAL INFORMATION

- o Location of documentation?
- o Contact information?
- o Location of Instructions?

SOCIAL MEDIA

- o For each, list:
 - Provider?
 - Login/Password?
 - Instructions?

¹ Contact information should include telephone number, address, mobile number and email address.

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Ross Uehara-Tilton (531-8031/rut@hawaiiilawyer.com); or Brooke H. Hunter (531-8031/bhh@hawaiiilawyer.com).

Mark Murakami spoke at the Coast Guard's Award Ceremony

Mark Murakami, a Captain in the Coast Guard Reserve and Director at Damon Key, was recently asked to deliver the keynote address at the Coast Guard's award ceremony for the Fourteenth Coast Guard District's Enlisted Person of the Year and Reserve Enlisted Person of the Year. His address was titled "Resilience: There Are Lessons Here for All of Us," about life lessons he learned from his time serving on a cutter homeported in Oregon.

His Seven Ways to Build Resilience are:

1. Be proficient at your craft. It will make you better able to handle the harder situations.
2. Care for your shipmates. Your hard times may pale in comparison to theirs and it will put your problems into perspective.
3. When confronted by options or too many choices or requirements, turn to your priorities.
4. No team member is excess, everyone has a role. Use them.
5. Steer towards your objective, but pay attention to the path to get there. The most direct course may be through a shoal.
6. Under promise and over deliver.
7. When you fail, forgive yourself. When others fail, forgive them.



Damon Key Sponsors "Girls Got Grit" Mentorship Program

Damon Key is a proud financial sponsor of the Girls Got Grit Mentorship Program at Sacred Hearts Academy. The program connects selected high school level girls from the Academy with professional women business leaders to gain job mentoring, skill building, leadership development and networking opportunities. The program's vision is to help girls become future women leaders in Hawaii. We were honored to have three of the program participants visit the firm and spend time with our women attorneys to share more about this important program.

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A D V E R T I S I N G M A T E R I A L

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Attorneys in the News

Damon Key Leong Kupchak Hastert
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Christine A. Kubota was appointed as one of Tri-Chairs of Gannenmono Committee with Tyler Tokioka and Sal Miwa. The Japanese-American community in Hawaii will celebrate the 150th anniversary of the first Japanese immigrants to arrive from Japan to Hawaii next year. 20+ Japanese American organizations are working together to celebrate throughout the year with various activities.

Kenneth R. Kupchak was recently a guest on Jay Fidell's *ThinkTech Hawaii* show. Speaking with *It Never Got Quiet* segment host Vic Craft, Ken discussed "The Art of Predicting Weather in Southeast Asia." As an Air Force Weather Officer, Ken had one of the more obscure and under-appreciated jobs in Vietnam, and that was the critical job of predicting the weather. You can find the link to the segment at <http://bit.ly/2f16LVv>

Mark M. Murakami has been awarded the Counselor of Real Estate credential by The Counselors of Real Estate. Membership in this international association is selective and is extended by invitation only. Mark is one of two lawyers in Hawaii that have this distinction. He also spoke at the William S. Richardson School of Law about "Technology, the Law and Practice."

Robert H. Thomas was quoted in a story in *The Texas Tribune* on the subject of inverse condemnation and flood liability in the wake of Hurricane Harvey in Houston, addressing the question of whether flooded-out Houstonians can win lawsuits against the U.S. Army Corps of Engineers.

"The hard part is going to be separating out if someone is at fault," said Robert H. Thomas, a Hawaii-based lawyer who has been practicing, teaching and blogging about eminent domain law for 30 years and isn't involved in any of the lawsuits. "We love to assign blame and the thing about inverse condemnation — why lawyers choose that as remedy rather than negligence — is it doesn't focus on fault, it focuses on the economic justice of who has to bear the burden of public necessity, public good." Thomas said property owners should look for a lawyer who specializes or has some experience in eminent domain and takings law. <http://bit.ly/2yYpGUu>

Kelly Y. Uwaine has been selected to the 2017 Hawaii State Bar Association Leadership Institute. She also has been selected by the American Bar Association, Section of Labor & Employment Law to participate in the Section Development Fund Fellowship three-year program. The Section focuses on unique areas of the law allowing more in-depth examination of issues, regulations & national trends.