

STARTING A NEW REAL ESTATE BROKER COMPANY (FIRM)





Prepared by the IAR Legal Department

Welcome to Real Estate Broker Company Ownership

Starting your own real estate firm involves reams of paperwork and a whole lot of planning, however managing your own firm can be one of the most rewarding experiences of your professional career. With the recent changes in the license law, broker-owners in Indiana are referred to as the “Managing Broker” of the firm. To become a Managing Broker, you must meet the following qualifications:

- Hold a broker’s license for at least two years
- Complete a 24-hour Managing Broker Course

The Real Estate Certification Program (RECP) offers both live and OnDemand courses. Find more information at www.recp.org

Exit Strategy

If your Real Estate license is currently associated with another Broker’s company then your first step to starting your own firm will be developing an exit strategy from your current position. Business arrangements can vary greatly from firm to firm so you will want to review your individual contract of association for the following:

- Will your current listings remain with your previous firm? Indiana law says they will unless there is a written agreement otherwise. 876 IAC 8-1-6.
- What about the buyers with whom you are currently working?
- Can you tell them about your new business or are you contractually obligated to refer them to one of the firm’s other agents?
- Will you receive a referral fee in this instance?
- Will you be a direct competitor of your former employer or are you transitioning to a specialized niche market?

Every firm is different so you will have to consider your own individual situation and decide on the appropriate and ethical manner in which you inform your Managing Broker that you are starting your own firm. The Golden Rule is always a good starting point. You want to make the transition as seamless as possible while minimizing hurt feelings. Remember, if you stay active in the industry, you are guaranteed to have a cross-deal with your former firm someday. Consult your attorney if you have any legal questions concerning the above.

Creating the Business Organization

Next, you can start on actually creating the business organization. If you are doing business under a different name (DBA- "Doing Business As") then you want to reserve that name with the State of Indiana.

- You can perform a preliminary name check for availability on the Indiana Secretary of State website (https://secure.in.gov/sos/online_corps/name_availability.aspx).
- Once you have chosen a name, you can reserve it with the State for a small application fee (<http://www.in.gov/ai/appfiles/sos-registration/landing.html>).
- When you have a business name reserved, you should decide on the type of business organization for your new firm (i.e. a sole proprietorship, partnership, LLC, etc.)
<http://www.in.gov/sos/business/2428.htm>
 - Speak to a lawyer and an accountant as to the relative legal and tax advantages and disadvantages of each form of organization. An accountant can handle your finances or you might look for a business accounting solution. Either way, properly account for all business disbursements, payments received, invoices, accounts receivable/accounts payable, etc.
- After you decide, file the appropriate forms of organization with the State (<http://www.in.gov/sos/business/2426.htm>).

Domain Name

When deciding on a business name, you may want to simultaneously check for domain availability for your website. You do not want to pay money to reserve a business name only to find that you cannot reserve a domain name that references your business name in some way. There are dozens of companies that offer web domain registration such as NetworkSolutions.com, GoDaddy.com, Domains.com, etc. Shop around as domain registration pricing can vary with the length of the reservation, the domain extension you select (.com, .net, .biz, etc.), and the additional services that you select with your domain such as email, web-hosting and analytics.

You will want to make sure that the web host that you select is able to support the IDX vendor of your choice. The Internet Data Exchange (IDX) is the computer feed that allows your website to display listings from your local Multiple Listing Service and for users to conduct searches of those properties in real-time based on selected criteria. If you want an all-in-one solution, several vendors are available who sell IDX-enabled customized websites to get you up and running quickly. Just read the fine print and make sure you maintain ultimate ownership over your company's domain and your internet identity.

Your Banking Needs

Next, you will need to open a business account at your local bank or credit union. You will need your DBA form and your articles of organization from the State along with an EIN from the Internal Revenue Service to open an account.

- You can obtain an EIN number online ([http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-\(EIN\)-Online](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-(EIN)-Online)) or by phone.

Develop the habit early of using the funds in your business account to pay only business expenses. While the intricacies of how you will actually pay yourself out of your business funds will vary depending on how your business is organized, the commingling of business and individual funds is never wise whether you are a corporation or a solo practitioner. Along with your standard business account out of which you will pay your day-to-day business expenses, you are also required under Indiana Code to create a clearly identified trust account in which to keep all funds belonging to others that come into your possession during the course of a transaction. (IC 25-34.1-4-5). This includes earnest money deposits, escrow funds, undisbursed sales proceeds, etc.

If you anticipate needing to establish a business line of credit in the future, you will want to consider having a DUNS (Data Universal Numbering System) number assigned to your business (<http://www.dnb.com/get-a-duns-number.html>). A DUNS number stays with your business throughout its existence and allows easier universal identification for determining a business entity's credit worthiness. Assignment of a DUNS number is free and can be attached to all types of business organizations. You may also wish at this time to open a credit card in the Business Name strictly for business use. You can compare rates at sites such as bankrate.com. It should also be noted however that you can also use a debit card for many of the same tasks as a credit card (internet purchases, reoccurring payments, etc.) if credit debt makes you uneasy.

Insurance

Errors and Omissions insurance is a must for any new firm in the face of our increasingly litigious society. Although it is not legally required, insurance is highly recommended for real estate practitioners.

Insurance carriers offer a variety of different plans with coverage levels appropriate to the number of anticipated agents in your office and the volume of your business. Check the rating of any insurance company you are considering using for free through a company like A.M. Best (www.ambest.com) before committing to a particular policy.

Your firm should have general liability insurance to provide legal defense and coverage for third party Bodily Injury or Property Damage claims. Property insurance protects you whether you rent or own for fire, vandalism, theft, smoke damage, etc. You may want to consider business interruption or loss of earning insurance as well.

Although you probably won't be providing vehicles, you may want to look at commercial auto insurance. You may need non-owned auto liability coverage to protect the company in case administrative staff or other employees do not have insurance or have inadequate coverage.

Worker's compensation insurance might be required if you have any employees. Penalties for non-compliance can be very stiff.

The key is to discuss all your insurance needs with an insurance professional.

Your Brand

You can now start building your business identity. Contract with a graphic designer (or a family friend knowledgeable in Photoshop) to create a company logo. Make sure you save a high-resolution version

of the logo for use in printed materials and a low-res version for use on the web. Ideally, you want at least one version of your logo saved in format such as .psd (Photoshop) or .ai (Adobe Illustrator) because these formats allow graphic designers to easily tweak and modify your logo to be used in several different forms of promotional and advertising media. Once you have your logo, you can order your business cards, for sale signs, open house signs and all other promotional printed materials that your firm will require.

Remember to review the restrictions on real estate advertising for your particular area and the Realtor® Code of Ethics and Standards of Practice (<http://www.realtor.org/mempolweb.nsf/pages/code>) when designing your promotional material. You do not want to have a hundred yard signs made only to find that they are non-compliant.

Joining the REALTOR® Family

Now that you have your identity, you want to make yourself known to your local REALTOR® Association. Contact your local Association of Realtors® and register your company with the association with yourself as the Managing Broker. From your local association, you can buy lockboxes (or use your own) and establish an account with the local Multiple Listing Service. Get to know the staff at your local association. You are going to be seeing them now more than ever. You will also want to allot time for the mandatory orientation meeting required by most associations.

While you are waiting for the stamp of approval from your local association to be “official”, you can get started on setting up your office. Whether you are working from home or renting some commercial space, every modern real estate office needs a scanner (preferably one that can scan legal-sized documents) and an all-in-one copier/printer. If you elect to have a business phone number, ask if they have discounts for members of the Indiana Association of REALTORS® or National Association of Realtors®. A surprising number of agents still use fax machines as well so you will want to choose a secure and trust fax-to-email vendor so that you can receive offers, counter-offers and most importantly, acceptances across every available form of media.

Legal Benefits provided to Members of the Indiana Association of REALTORS® include Zipforms, an electronic platform that provides legal documents vetted by real estate attorneys and industry-wide experts for use in your real estate transactions. Also, the IAR Legal Hotline is a free member benefit available to all Managing Brokers, Monday through Friday, 9am-5pm. Another legal benefit of joining the REALTOR® family is the availability of the IAR Legal Library which contains sample templates for many necessary office documents to reduce the risk of lawsuits. <http://indianarealtors.com/Legal-Library/Index.aspx>.

In addition, IAR offers Affinity programs, visit: <http://www.indianarealtors.com/Member-Benefits/Index.aspx> for more information.

Building Your Team

You are almost ready to finally start selling real estate. The last step is to build your team of professionals. These are people who are experts in other industries so that you don't have to be. At a minimum, you will need a trusted accountant, a structural engineer, a mortgage broker, an insurance agent and a real estate attorney. Having a person who can provide tech support in a pinch would not

hurt either. You may go months without having to call on the expertise of any one of these professionals, but it is good to start building your network early. It is better to have a trusted resource on call when you need them rather than trying to find an expert under a tight deadline.

Building your team extends to all agents in your office who are going to associate themselves with your firm. What documents are necessary now that your firm has staff? Documents such as a staff handbook, a commission policy, technology policy, office policies discussing agency relationships, a data retention policy and social media policy, are just a few of the documents you will need for risk reduction. It is always a good idea to have your attorney prepare or review these documents. As mentioned above, IAR Legal has made available to its members sample templates for many of these documents at <http://indianarealtors.com/Legal-Library/Index.aspx>.

Good Luck

Last but not least, get out there and sell. Tell your network of friends and professional acquaintances that you have ventured out on your own. Ask for referrals. Remember the Golden Rule: Do unto others as you would have them do unto you. In short, open the two doors of opportunity: your front door and your car door. Get out there and build your own real estate empire.