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## Can Founders Pay For Stock in Cash or Contribute Intellectual Property?



Mark Figueiredo, Esq.

Starting a business entity is a complicated issue that can be compounded by things such as founder's stock and each founder's respective contribution. Equity considerations can be extremely important in starting a business, especially when one founder contributes intellectual property (IP) rather than cash or labor.

Awarding founder stock is a relatively common practice; doing so gives the contributing founder a measurable property interest in the newly formed entity. Typically, these stocks have very low face values so the founder receives a large amount of stock respective to his or her contribution. At the time of issuing founder stock, each founder may contribute different assets in the form of cash or intellectual property, sometimes both, to the newly formed entity.

Founders contributing intellectual property will want to confirm it is properly assigned to the newly formed entity; otherwise they risk complications of its uncertain ownership. Licensing the intellectual property, as opposed to assigning it, results in the contributor retaining ownership; this can affect the overall valuation of the entity.

In order to be considered tax free, contributions to the entity must comply with Section 351 of the U. S. Tax Code, which states transfers made to the entity meet the following two conditions:

- The intellectual property may be transferred only for stock (the transferor may not receive cash); and
- After the intellectual property is transferred, all founders must collectively own the stock that comprises at least 80% of the voting power, and 80% of the total number of shares of each class of stock.

Failure to adhere to these requirements forfeits the intellectual property from being considered tax free. Instead, the contribution of intellectual property will be taxed as if the transaction was a sale to the entity.



## Success Story

Structure Law Group represented founders of a company in the incorporation process and also in registering trademarks for their exciting venture. Some time later, we learned that a new Utah company started doing business under our client's name. We immediately took steps against the infringing company. Thanks to prompt action, and because all of the filings were timely and properly done, the infringing company was forced to start over. Within days, the offending website was shut down and all social media accounts were taken down and offline. Structure Law Group's client was extremely happy with the expedited results and protection of their brand.

## Mechanics Lien Law Basics for Owners, Contractors and Subcontractors



Stephen Beals, Esq.

A mechanics lien is a tool that creates a security interest in the property on which you worked. Too often, a contractor, subcontractor, laborer or material supplier on a construction job does not receive the compensation they deserve for work performed or supplies provided. If payment is not received, you can sue to foreclose on the lien to satisfy the amount.

If the job is a private construction project, a primary tool for receiving payment is the mechanics lien.

A mechanics lien is filed with the office of the county recorder in which the construction project takes place. The filing must include specific information such as the name of the property owner, nature of the work performed, name of the person for whom the work was performed (if you were not the direct contractor) and how much money you are seeking. Prior to filing the mechanics lien, a preliminary notice should be filed.

The time frame for filing a mechanics lien depends on your particular contribution to the project. For example, if you are a contractor, you must wait until your contract is complete to file the lien. After that date, you have either

90 days or 60 days after a notice of completion is filed by the owner, whichever is earlier. If you are a supplier or subcontractor, you have from the time you stop work until 90 days after the end of the project, or 30 days from a notice of completion, whichever is earlier. One of the attorneys at Structure Law Group can closely evaluate your situation to ensure you file your lien in a timely manner.

Recording a mechanics lien does not mean the property will be foreclosed. If a certain amount of time passes and no foreclosure action has been filed, an owner can file to have the stale lien expunged. You can also obtain a release bond, which requires the lien filer to make a claim against the bond instead of foreclosing on the property. It may be possible to negotiate with the contractor, subcontractor or other party and agree to a settlement in exchange for releasing the lien.



### Do April Showers Bring May Flowers?

Surely you've heard the saying, "April showers bring May flowers," but do you know how the saying originated and if it's even true? Traced back to a reference from 1886, the story goes the more rain that falls in the early months of spring, the more likely flowers will bloom early and often for longer. Although this has been observed in the Rocky Mountains, most plant species rely more on temperature than on rainfall.

**The Cuckoo Bird's Return:** According to legend, once the Cuckoo bird returns from winter, spring has begun. It is said to sing songs to villagers from mid to late April and if you hear its melody, you must empty your pockets of coins and sit on the ground. If the earth is soft, you will receive good luck.

**April Fool's Day:** This day of pranks has been traced back to France in 1582 when they switched from the Julian to the Gregorian Calendar. Some think the laughs resulting from tricking and fooling others can be good for your health, since it encourages stress relief.

### Spring is in the Air!

What do you enjoy about spring? Here are some famous quotes about the season:

"No matter how long the winter, spring is sure to follow." -Proverb

"Spring makes its own statement, so loud and clear that the gardener seems to be only one of the instruments, not the composer." -Geoffrey B. Charlesworth

"Everything is blooming most recklessly; if it were voices instead of colors, there would be an unbelievable shrieking into the heart of the night." -Rainer Maria Rilke



SLG Welcomes Ethan Solove!



Ethan Solove, Esq.

Structure Law Group is excited to announce that Ethan Solove has joined the firm's litigation department.

Ethan represents corporate and individual clients in a wide variety of litigation matters, including business disputes, breach of contract matters, mechanics liens, creditors' rights, and shareholder, member and partnership disputes.

He is involved in all aspects of the litigation process, from advising clients on pre-lawsuit issues to drafting pleadings, handling discovery, law and motion matters, settlement negotiations and trial.

Prior to joining Structure Law Group, Ethan was a practicing attorney at Dechert, LLP where he began his litigation practice. During his time there he gained a significant amount of experience in business litigation dealing with technology, pharmaceutical and finance service companies. Ethan is admitted to practice law in California, New Jersey and Pennsylvania.

SLG Welcomes Rakesh Ramde!



Rakesh Ramde, Esq.

We are also excited to welcome Rakesh Ramde as an Attorney at Structure Law Group.

Rakesh Ramde represents entrepreneurs, businesses and high net worth individuals with their legal needs. Mr. Ramde routinely handles legal and litigation matters, partnership, corporate formation and governance, business financing, intellectual property, real estate, agreements and general business counseling in a wide range of technology and commercial areas.

Prior to joining Structure Law Group, Mr. Ramde was a practicing attorney with corporate clients and at established Silicon Valley law firms, such as Cooley LLP and Pennie & Edmonds. He has provided services to technology clients, start-ups and technology investors for many years.



It's a Girl!

Structure Law Group has another new member to announce. Our very own Maichi Hoang gave birth to her second child, Mina Linh, this past November.

Congratulations to Maichi, Dang & big brother Bryan!



New Laws Effective January 1st, 2016

**Minimum Wage Increase**

Effective January 1, 2016, California's minimum wage is now \$10 per hour. However, many cities in the Bay Area have higher minimum wages. In San Jose and Sunnyvale, the minimum wage is \$10.30. In Mountain View, Palo Alto and Santa Clara, it's \$11. San Francisco's minimum wage is currently \$12.25, but will go up to \$13 as of July 1, 2016. Make sure you are paying your employees the proper minimum wage for the location your business operates.

**Equal Pay Law Amendments**

California's new Equal Pay Law requires that men and women must receive equal pay for "substantially similar work." The law formerly required equal pay for "equal work." This new law has been called the strictest fair-pay law in the US.

**Restrictions on E-Verify**

As of January 1, 2016, California employers cannot use the E-Verify system to check and see if existing employees are authorized to work in the United States. They can only use E-Verify to check the status of workers who have received a job offer conditioned on the employee's ability to legally work in the U.S.



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Protection of Intellectual Property • E-Commerce • Construction Contracting & Payment Claims

## Dates To Remember

- May 8---Mother's Day**
- May 11---Third Shift Workers' Day**
- May 16---Hug a Tree Day**
- May 20---Be a Millionaire Day**
- May 23---Lucky Penny Day**
- May 28---Hamburger Day**
- May 30---Memorial Day**



Mark Figueiredo, Esq.



Rebecca McCracken, Esq.



Stephen Beals, Esq.



Stephen Moses, Esq.

## Did You Know?

- Banging your head against a wall burns 150 calories an hour.
- If you leave everything to the last minute... it will only take a minute.
- It is estimated that millions of trees in the world are accidentally planted by squirrels who bury nuts and forget where they hid them!



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Jaclyn Ford, Esq.



Tanya Falleiro, Esq.



Ethan Solove, Esq.

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We appreciate your referrals!