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Do's and Don'ts for the Entrepreneur

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Key Pre-Formation Issues

- Who are the owners?
- What are the founders' responsibilities?
- What work product goes in to the business?
- Choice of entity?



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Capitalization

- **Equity is forever**
 - Need to get this right up front
 - Options vs restricted stock
 - Source of capital
 - Construct a pro-forma capitalization
- **Who is investing? How much? Type of investment (cash, services, property)?**
- **The company is not your piggy bank**



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Stockholder Agreement

- **Goal: Keep shares in the hands of the participants**
 - Right of first refusal
 - Drag/Tag
 - Participation rights
 - Restrictions on the transfer of stock to competitors.
 - Voting for specified directors
 - Process for breaking deadlocks
 - Russian Roulette



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Contract Basics

- **Protect company IP**
 - Proper IP protection enhances value
- **Get it in writing**
 - Have your own forms of agreements
 - Understand key terms and try to stick to them
- **The importance of record keeping**
- **The danger of “exclusives”**



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Confidentiality Agreements

- **Why are Confidentiality Agreements necessary?**
 - Needed to create and protect trade secrets.
 - Send the message that you intend to protect your rights
- **How extensive an agreement is needed?**
 - Be realistic about the protection that the confidentiality agreement will provide; difficult to police.
 - If you don't trust the other side, think twice before divulging any confidential information.