If you are part of a large, well-established winery, it’s likely that you have a good team of lawyers in your corner already. If you are a small, family winery, or just starting out, there are some important legal issues to consider before you make large decisions about your business. The dream of having a vineyard and bottling your very own wine for sale to the public is one many of us can relate to, but making it happen takes more than coming up with a clever name and designing a label.

In fact, let’s start right there—your name, or the name of your wine. Before you invest a lot of money with a graphic artist and a label printer, it will pay to make sure the name is not already being used. Jay Behmke, a partner at the Santa Rosa, California, legal firm of Carle, Mackie, Power & Ross, LLP, pointed out that there are six thousand wineries in the United States, and each has several different brand names for their different wines. “It is worth your while,” he said, “to have experienced, competent people do a trademark and brand search to find out if the name you have in mind is in fact available.”

If you are starting out, the first and perhaps most important thing to consider is how to structure the ownership of your winery. There are several choices ranging from sole proprietorship to partnership to corporation. Each has its own ramifications in the areas of management, sharing of profits and losses, tax liability, continuity, liability, and more. “Anyone who doesn’t set up a legal entity to run their winery is making a mistake,” said Behmke. “There are tax issues that follow each type of legal entity. For example, if you set up your business as a sole proprietor you are taking a big risk. Sometimes it’s very simple, such as a part-
Katherine Philippakis, chair of Farella Braun + Martel, a law firm based in San Francisco, California, pointed out that having an attorney well versed in the ins and outs of the wine industry provides a winery owner with a competitive advantage. “As the saying goes, an ounce of prevention is worth a pound of cure. That’s very true in the wine business,” she said. “The wine industry is highly specialized. A knowledgeable attorney can spot issues that other attorneys would miss; this can help the owner save money and can save them from missteps that could potentially harm the owner’s business.”

There are many things that winery owners need to consider when it comes to compliance with law. Though it may seem obvious that an attorney’s services would be called upon before getting started, many take the plunge without legal counsel.

“I have twice run across winery owners who got into the wine business and were happily selling their wine without a permit,” said Behmke. “You need different permits depending on how you are selling your wine. An attorney can help you figure out which permits are necessary.”

Another hot spot is business loans. “Winery owners often enter into business loans without consulting their attorneys first,” said Philippakis. “Business loans are not like residential mortgages; the terms can and should be negotiated by an attorney, particularly the covenants that a borrower must make which should be individually tailored to a winery’s unique situation.”

Contracts are also a potential problem area for winery owners, according to Mark Gladden of Passalacqua, Mazzoni, Gladden, Lopez & Maraviglia, LLP, in Healdsburg, California. “I think many winery owners don’t take a good enough look at contracts for purchasing grapes,” he said. “They can get ‘casual’ with it as time goes by. And sometimes they get into marketing programs but don’t look closely enough at the provisions for getting out of the contract if things don’t work out the way they planned. We can help them with these things.”

Not only is it a good idea to hire an attorney who specializes in the wine business, it’s a good idea to form a relationship with an attorney you trust and who understands your individual business. Every time a winery owner signs a contract, starts a new sales program, creates a new position for hire, negotiates for the sale or purchase of grapes or equipment, or decides to expand his or her business, having a trusted, knowledgeable attorney can be the difference between a smooth transaction and a legal nightmare.

“Someone with experience in winery law will know the animal and understand how best to handle it, and handle it quickly. This saves time and money,” said Gladden.

This doesn’t mean the attorney has to be standing over the owner’s shoulder every minute of every day. But it does mean that setting up your business correctly is something that is best left to someone who understands all the legal points that need to be covered in order to minimize or eliminate future hassles.

The winery business has long been one where many agreements are made with a handshake between neighboring farmers, or growers and buyers that have built trust over the years. This small, intimate, model of doing business has become more difficult as laws and regulations have changed through the years. Trust is good, but even better is a clear, legal agreement that guarantees that both parties know what has been agreed upon, and what to expect in the event of certain contingencies.

Clearly, as with any business, running a winery comes with its full measure of legal issues that must be dealt with correctly if the business is to thrive. Whether it’s a liability issue concerning drunk or under-age visitors in your tasting room, negotiating contracts for land or easements, sale or purchase of grapes, hiring and firing of employees, or getting permits for signage, a good attorney who understands the specific issues facing wineries is a must. We may not want to think about legal issues in our daily lives, but when we find ourselves in a pickle, a good attorney may be the reason we are able to stay in business doing what we love.

**SOME OF THE OTHER ISSUES THAT HAVE LEGAL RAMIFICATIONS FOR WINERIES ARE:**

1. Land Acquisition
2. Financing/Borrowing
3. Employees/Workers’ Compensation/OSHA
4. Environmental Issues
5. Water Rights
6. License Agreements
7. Construction
8. Business Succession
9. State and Federal Beverage Licensing and Permitting
10. Litigation/Lawsuits