

# ***Teaching Surf Instructors to Teach***



## **National Surf Schools and Instructors Association Instructors and Coaches Training Manual**



### **Business and Laws Part 11**

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## **Introduction**

This module is intended not only for current school owners or those who wish to open their own school, but also for those who teach anyone on their own for pay. There are a massive number of federal and state laws that can impact an individual instructor and/or a business owner during a class, plus there are also laws that impact employee/employer relations. Finally, if you have insurance coverage, failure to understand the training and documentation requirements for what you do or what anyone who works for you does can negate any coverage should an incident occur. **Proper risk avoidance for an individual means understand your risks and take action to mitigate them.**

## **Surf School Business Planning**

At some point, many instructors decide they want to get into the surf school business on their own. This isn't as easy as it sounds and requires both a commitment, and a certain amount of start-up costs. Additionally, there are many factors to consider that can significantly impact the success of your endeavor. One of the things you need to personally consider is do you really want to do it? This chapter is informational only and is not intended to be legal or other professional advice. Laws and policies are constantly changing, and often vary from state to state, so be sure to get the information that most closely applies to your vision for your surf school.

## **The Business Plan**

Before you even consider getting a business license, create a written plan. Simply writing out what you want to do ahead of time will significantly help you focus on items that can help you succeed. It will also be necessary if you want to obtain a start-up loan. Planning helps keep everything in proper perspective. Without a step-by-step business plan, it becomes very difficult to keep a business running successfully.

The elements below are those necessary not only if you want to obtain a loan, but also include day-to-day operational issues. The plan is straightforward with sections that address:

- Objectives
- Mission
- Points to be Successful - Success or Failure Criteria
  - Personal Experience/Background
  - Potential Market and Location
  - Competition
  - Start-up Timing
  - Equipment Start-up Costs
  - Staff and Training
  - Season/Hours
  - Marketing
  - Other Potential Income Sources

- Other Day-to-Day Operational Issues that May Exist

### Executive Summary

Once you complete your plan, write an executive summary that covers in a paragraph or two what you hope to accomplish, including your ultimate goal for at least the next couple of years. In many instances, a bank or potential partner will just review the executive summary and make a decision to read further or not.

### Objective

Here you state your objectives over the next two to three years. Three years is a good time period to complete startup and growing pains, and start to show a return on your investment. State how much revenue you expect to be generating by the end of the period.

### Mission

The mission of your school is to provide high quality, convenient and comprehensive surf instruction to beginner surfers. If you also plan to offer advanced lessons or coaching, state that as well. Include identifying the most important aspect of your training techniques and lessons. It should include SAFETY as well as having FUN. If your mission is to get all beginners up and riding waves after their first lesson, so state it.

### Analysis Points to be Successful

This section represents the primary analysis of your business planning. It is both the model your business will follow, and its analysis represents the theoretical proof that you have addressed the questions that must be answered. This does not have to be a difficult exercise, but the following decisions need careful thought.

- Legal and Licensing Issues
- Insurance
- Location for the Business
- Competition/ Advertising
- Seasonal Issues/ Staff Help
- Start-up Costs
- Student Mix
- Risk Reduction

### The Importance of Professional Advice

As you start or run your business, no matter how small it is or how smart and hardworking you are, you need a good relationship with at least two kinds of professionals: accountants and lawyers. There are a plethora of do-it-yourself books and websites out there, and most, if not all, of what you need to do as a business owner *can* be done without the help of these two people, but using them as you build your business has several benefits: they can save you hours, if not weeks, of time, they can show you ways to save money, they can help you avoid financial and personal liability, they are often

good advertising for your business with other (wealthy) clients and coworkers, and they can give you the peace of mind that you're on the right track. The earlier you can engage a professional, the better.

**Accountants** are most helpful in setting up good bookkeeping systems that you can implement. They may be able to suggest good software or programs, policies for income and expense recording, employee payroll procedures, filing the right tax forms and withholdings, and ways to save on taxes. (The IRS provides a ton of information but does not suggest ways to save.)

**Attorneys** are most helpful reviewing policies and contracts to be sure they protect you from unnecessary loss as well as keeping up with legal obligations for corporate filings and reports. In the event of an incident, they can represent you in civil litigation.

**Selecting a professional:** Few businesses can afford to hire these professionals in-house, but you can contract with them on an as-needed basis without much financial obligation. Ideally you want an individual or firm that not only understands your type of business (surfing), but works well with you personally. You don't need to be friends, but you *do* need to understand each other easily, trust each other, and maintain good lines of communication. Be sure you hire a licensed practitioner -- a Certified Public Accountant (CPA) or a member of your state's bar association (for attorneys) -- and someone who returns your calls or emails in a timely manner.

**Dealing with professionals:** You may not be able to afford to ask your lawyer or accountant everything you'd like, so you might need to be selective and prepared about how you spend their time. Remember that unless you are a sole proprietor, these professionals work for the company and not you personally. If you cannot afford a professional for these services, a good general rule is to do your research, be thorough, and keep good records. One of the most common sources of trouble for business owners is intermingling business and personal funds, so don't do it.

### **Legal and Licensing Issues**

The first item you need to do is find out licensing issues related to the general area where you want to locate your business. If you can't get a license, stop right there and find a new location. Some surf beaches are closed during summer months to surfing, others, such as state or federal beaches and parks, require special permits for commercial vendors, and still others limit how many surf schools or students can participate. Be sure to research the licensing aspect first. Without proper licensing, you will not be allowed to operate.

Licenses normally fall into a few types, commercial retail, commercial service, or some combination of both. Surf schools are often a great place to offer used boards, beginner boards, wetsuits, leashes, board rentals, etc. Depending on where you live, usually you need a county license, city license, state retail and/or service license, and then a fictitious business name as well. Your business name will be covered later. You will also need a business checking account. All these various licenses shouldn't be more than \$200.

## **Liability**

Unfortunately, as is the case with all business owners, the chances of getting sued have dramatically increased in the last decade. Even when you have your students sign a waiver, you and your business aren't completely protected. General Liability insurance can prevent a legal suit from turning into a financial disaster by providing financial protection in case your business is ever sued or held legally responsible for some injury or damage. In many cases, the insurance company will not cover you if you do not have students sign a *Waiver of Liability*. It may be a good idea to have your instructors sign waivers when they start working as well.

## **Waivers**

Regarding waivers, many instructors and school owners think that their waivers will protect them if a student is injured. Unfortunately that is a serious misconception. Lawsuits against the instructor and the surf shop and their owners usually indicate not only negligence (failure to exercise ordinary care), but "gross negligence," which is defined in some states as "An extreme departure from what a reasonably careful person would do in the same situation to prevent harm to oneself or to others." In most states, a liability waiver cannot release you from gross negligence.

A sample waiver for all students to sign was previously provided. Some countries require no waiver at all while some areas of the world go overboard with their waiver requirements. It is important to ensure that the student (or, if a minor, the student's parent or guardian) *actually* understands that surfing is dangerous and bad things happen sometimes. In the waiver, the student is assuming the risk of injury or loss as well as agreeing not to sue you or the company. In general, there are several important points to address in a waiver.

1. The signer must recognize that surfing is an extreme sport and that participants can and do get injured on occasion.
2. The signer specifically and forever releases both the instructor and the business from all liability for injuries or damages sustained during the lesson, while going to and from the lesson, and while participating in future surfing activities.
3. The signer accepts all responsibility for their personal actions and behavior that may cause injury to other students or surfers in the water.
4. The signer agrees to obey safety and surf etiquette as described by the instructor.
5. The signer consents to the release and use of any pictures taken during the class for marketing purposes.
6. That the name of each family member who is a student is included in the waiver signed by his or her legal guardian.

## **General Liability Insurance**

General Liability pays losses arising from real or alleged bodily injury, property damage, or personal injury on your business premises or arising from your operations. In the past, accident medical coverage was either too costly, too limited, or not available at all. Individuals were either forced to pay extremely high insurance premiums or to run

schools without proper insurance protection, therefore running the risk of personal exposure to lawsuits or a participant or staff member's injury claim.

Comprehensive programs are now available to specifically cover the inherent risks involved for today's surfing schools. An Accident Medical Insurance Program is designed to help eliminate the financial and emotional burden one can incur as a result of injury in today's surfing schools.

All member schools of NSSIA are required and subscribe to carrying General Liability and Medical Insurance as part of their business practice. This ensures to local governments, as well as the public, that NSSIA member schools adhere to sound and safe business practices. Find a business insurance provider before you actually commit. Insurance can run \$1000 to \$5000 per season or year, usually payable up front.

One additional note about medical liability, you still need to provide immediate first aid on the beach should an injury take place. Injuries happen no matter how much you try to prevent them. To minimize liability, every school and instructor needs to have a first aid kit right on the beach should an injury take place.



### **Sexual Harassment**

Surf instructors, coaches, and even surf school owners are especially positioned to become the “VICTIM” of sexual harassment. Face it, when you are giving a lesson, you are in close contact with your students, they look good, and you are often being bounced around in the surf. When you hire surf instructors to work for you, at in warm weather, they show up in swim suits and perhaps no rashguard. Just as when you coach younger kids at a school, you have the same problems as any other person of authority will have, particularly if your “young kids” are aggressive teenagers. This section deals with applicable laws and how they impact school owners, surf instructors, and coaches.

### **Surf School Owners**

Sexual harassment under Federal law is generally defined as unwanted sexual contact of two main types: (a) quid pro quo harassment which occurs when employment is conditioned on the submission to unwelcome sexual advances, or (b) unwelcome sexual conduct that was severe or pervasive enough to create an abusive environment for the employee.

Typical examples of sexual harassment behavior at work include sexually oriented gestures, jokes, or remarks that are unwelcome; repeated and unwanted sexual advances; touching or other unwelcome bodily contact; and physical intimidation. Sexual harassment can occur when one person has power over another and uses it to coerce the person to accept unwanted sexual attention.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment,

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

As an employer, prevention is the best tool to eliminate sexual harassment on the beach. In order to protect yourself and reduce liability, school owners must take the steps necessary to prevent harassment:

- Develop and publicize a sexual harassment policy that clearly states sexual harassment will not be tolerated and that explains what types of conduct will be considered sexual harassment.
- Develop methods to inform new instructors and coaches of the school's sexual harassment policy and grievance procedure. Have instructors and coaches sign a form affirming that they have seen your sexual harassment policy and will abide by it.
- Develop a procedure for students and employees to report sexual harassment. Follow up with any reports immediately and document your actions.
- For larger schools, conduct periodical sexual harassment awareness training for all employees

Adoption of strong preventive measures is often the best way to confront the serious problem of sexual harassment. In addition, the steps described above may also be useful in responding to sexual harassment once it has occurred to ensure that it does not happen again.

### **NSSIA Guidelines for School Owners on Receipt of Information about an Alleged Sexual Harassment**

If a school receives information that sexual harassment may have occurred, the owner must move quickly to determine what happened. When a student, spouse or parent reports sexual harassment, the school owner should explain how its grievance procedures work and offer the individual the opportunity to use them. This immediate first step may deter the person complaining from further legal action.

Sometimes a school may need to take interim measures before the investigation is concluded. These steps may include reporting the incident to law enforcement officials and temporarily placing the employee on leave.

A school's grievance procedures should:

- Give notice of the procedure, including where complaints can be filed, to the person complaining.
- Immediately conduct an investigation including giving the parties involved the opportunity to present witnesses and other evidence
- Give an assurance that the school will take steps to prevent recurrence of any harassment and that it will correct its discriminatory effects on the complainant and others, where appropriate.

### **NSSIA Guidelines for Instructors**

The following guidelines should help protect instructors from sexual harassment charges.

- Remain professional at all times
- Do not comment on the looks or clothing of attractive students

When in the water, avoid touching the student directly. It's best to hold and position the board using the leash attachment. If, in order to avoid injury, you must touch your student, touch them only below the knees, and then apologize after. One additional protection technique is to notify the student that if they feel you grab their ankle, you are doing so as a protective mechanism, and they should prepare for a wave landing on them should they feel it.

### **Legal Forms of Business: Corporations and Sole Proprietors (and LLCs)**

Deciding what legal form your business can be a difficult, but important, decision. In most cases, the legal form of a business can be changed, but it takes a lot of time and hassle, so it's best to put in some time thinking about it on the front end if you can.

It is also important to note that each state has its own laws and structures for each type of business, so it's important to find and follow the laws of **your state**. The following is only a general guide.

The most common types of businesses for surf schools and instructors are: Sole Proprietorship (or Partnership), Limited Liability Corporation (LLC), or Corporation (Type C or S).

**Sole Proprietorships** (SPs) are the simplest forms of business, with all the business property and licenses being in the name of the owner (or the properly filed Fictitious Business Name or Doing Business As statement, FBN/DBA). In SPs, the person *is* the business. This form offers the greatest amount of control, the simplest accounting (profits and losses are the business owner's alone, including tax liability), and the least amount of paperwork and start-up cost. On the other hand, it offers the *least* amount of protection from liability. **Partnerships** are similar, and can be a great way to combine skills and resources, but it has the additional issues of negotiating how the partnership works and how to run the business. Partners can also be liable for the actions of another partner.

A **corporation** offers a much greater amount of protection from liability, but at the expense of a lot of paperwork, fees, and sometimes, double taxation (taxing the income of the business as well as the personal income of the shareholders, or owners). A corporation is its own “legal person”, run by directors and owned by shareholders, both of whom are not personally liable for corporate debts (assuming they acted legally and reasonably). To form a corporation, you must file Articles of Incorporation with your state and elect to be either a C-Corp (double-taxed) or S-Corp (pass-through taxation). A **non-profit corporation** is formed much like a corporation that, because it is for a public benefit, and because it agrees to abide by certain restrictions and rules, may save in taxes.

**Limited Liability Corporations** (LLCs) are gaining popularity because they are more flexible and tax-friendly than corporations, but retain the benefit of limited liability. LLCs are owned and run by members and to start one you must file Articles of Organization with your state. There are big state-to-state differences in how LLCs are started and maintained, with California being particularly difficult, so be sure to know your state’s rules and fees.

### **Initial School Location Decisions**

People from all walks of life and every corner of the world have learned to surf. Surf lessons are extremely popular among tourists from throughout the US. Additionally, even though surfing is unique to coastal areas, wave pools may eventually extend the sports uniqueness well beyond its original locations. What this means is you can draw from a global environment for your clients, and the only restrictions you have (at least for now) you need to be close to a beach (not a point break) where waves break over a wide area consistent and not too big.

To determine a prime school location, more information on marketability and related data are necessary. First, for best results you need to be located in an area frequented by tourists, particularly off-season winter tourists, or an area close to a large city. You also need to be in an area that doesn’t have a lot of existing surf schools. For example, starting a new surf school in Huntington Beach, San Diego, or Hermosa might be difficult with numerous widely known schools already in the area. However, you might be able to find a location farther north that doesn’t have a school, so long as your planning allows for an off season when the water gets colder and there are fewer opportunities available to teach.

### **Business Competition and Formal Advertising**

The basic problem under consideration here is where and how to establish a foothold in the surf instructor market place. Short-term issues are considered the most important since, once established, schools normally can exist from year to year without continuous upgrading or additional cost driven enhancements. The first issue to consider is to select a name for the school or company. The surf school’s name, as with most market-oriented products, is best remembered with minimal advertising if it has relevance to the surf industry and capitalizes on something well known to the public.

Choosing a recognized surfer's name for a school is often tried with success. However, not everyone who wants to start a school has been involved in surfing long enough to be recognized outside the surfing community. Several individuals have bought existing

schools just to use the notoriety of the owner's name. This sometimes becomes a problem when the surfer who sold his/her business decides to open or affiliate with another school later on.

Related to advertising, we previously discussed websites. This form of advertising has become an absolute must in our current technology world. The first place a person goes to find a school in their area is to the Internet. A do it yourself web site will cost you about \$50 per year, well worth the expense. The NSSIA gives a free link to certified instructors and accredited surf schools, for increased presence Internet search engines.

One of the items be sure to employ when you use a web site in the instruction or camp Frequently Asked Questions (FAQs). The following provides an example of a FAQ a surf school or camp can provide concerning their offerings.

#### **How do I sign up?**

- Reservations can be made via Internet, phone or in person. Students are expected to sign waivers and submit payment prior to their lesson. All students should be present at the beach site at least 15 minutes prior to their scheduled time. Camp students should be present for beach registration at least 30 minutes prior to the scheduled time.

#### **Do I need to make reservations?**

- Reservations for all lessons are recommended at least two weeks in advance. Provide information such as sex, weight, age, experience, etc. so the instructor can ensure the proper equipment is available when the student arrives.

#### **What time of year do lessons start?**

- In most of North America, private off-season lessons require wet-suites to account for colder water temperatures. The majority of people take private or group lessons in the summer between the months of June & September with camps held in late July or August.

#### **Private lesson, group or camp?**

- When deciding on which learning adventure is best, consider your physical conditioning, age, budget, time restraints and previous experience. Day camps are normally the most popular because students have more time to learn. While students have the chance to learn more, if they aren't ready for the physical demands, they might get tired and thus only participate in a portion of the training experience. Group and private lessons are less expensive but only last between one and two hours. Group lessons are the easiest plus you can learn with others of similar ability, but private lessons will move you to the next level faster. Multiple lessons are necessary to achieve better results.

#### **What is taught in a lesson?**

- Try to keep this section short while covering the NSSIA objectives. In all lessons and camps, the first order of business is to cover the safety aspects of surfing; to handle the board, surf etiquette, the best place to catch and ride a wave, etc. As the student learns how to stand and ride a wave, more advance skills will be

offered. For shorter lesson, the two main objectives are to get the student up on a wave and teach safety.

### **Where are your lessons & camps?**

- Here you provide specifics on where your lessons are located. Most surf schools have a sign or beach set-up students can look for when they walk out on the beach. Include driving directions for those from out of your area.

### **What do I need to bring?**

- A towel, shirt, sun block, water and, if the lesson is longer than 2 hours, a snack is recommended. If the water is warm, it is also recommended that the student bring a drink to avoid dehydration. A surfboard and leash are always provided. However, rashguards of a single color are often used for student and instructor identification and sun screening, plus wetsuits are normally included depending on water temperature. If parents or friends are planning to watch, they may want to bring a beach chair.

### **What is the best age?**

- Six years old is usually the youngest age recommended by NSSIA. At this age, private lessons with a one-on-one instructor should only be offered. Camps and small group lessons should only be offered for students 10 years old and above.

### **Is there anything I can do ahead of time so my lesson goes easier?**

- If you don't ride a skateboard, go roller-skating or roller-blading a few times to help you develop balance. Also, being in good physical shape will go a long way towards enjoying your lesson more.

Another tremendous way to advertise is a sign on your vehicle and/or shop and a banner you can put up on the beach. You would be surprised at how many walk-ons show up when a surf lesson is going on just because they see the sign. Make sure you don't have a local beach restriction about signs when you put it up.

### **The Marketing Plan<sup>1</sup>**

Does your surf school or shop really need a marketing plan? Maybe not but in general, businesses that are successful in marketing invariably start with a marketing plan. Small companies like surf shops and surf schools are subject to a lot of change and can get by with a small plan that only covers a single season or year. Plans should be written based on previous experiences and developed prior to the season start. The plan is considered the "heavy lifting" of marketing since it covers what to do and how to do it, probably marketing's greatest challenge.

Everyone who works for the business should see the plan. No matter the business size, get feedback from everyone involves since the marketing itself is everyone's responsibility. If the business is essentially a one-person management operation, you still need even part-time employees to understand and support the ideas in the plan.

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<sup>1</sup> Source: The Small Business Encyclopedia and Knock-Out Marketing.

There is a relationship between a marketing plan and a business plan or vision statement. The business plan spells out what the business is about--what to do and not do, and what the ultimate business goals are. The company's business plan provides the environment in which the marketing plan must flourish.

The marketing plan and business plan must be consistent but the marketing plan is more meaningful at the basic level.

- **Rallying point:** The marketing plan gives employees something to rally behind. If employees are to feel committed to the company, it's important for them to share the vision of where the company is headed in the years to come.
- **Chart to success:** Even though it's imperfect, if you don't plan at all, you're doomed. Even an inaccurate plan is better than no plan at all.
- **Business operational instructions:** The marketing plan is a step-by-step guide for a company's success. More important than a vision statement, the plan will assess the business from top to bottom and make sure all the pieces are working together in the best way. It could be considered a to-do list on a grand scale. It assigns specific tasks for the year.
- **Captured thinking:** Financial reports are the lifeblood of the numbers side of any business, no matter what size. It should be no different with marketing. The written document lays out the business game plan. If people leave, if new people arrive, if events bring pressure to alter the givens, the information in the written marketing plan stays intact to remind everyone of what the original plans were focused on.
- **Top-level reflection:** In the daily hurly-burly of competitive business, it's hard to focus attention on the big picture, especially those items that aren't directly related to the daily operations. Take the time to periodically rethink about the business--whether it's providing owners and employees with what they want or there aren't some additional details that could be added.

Hopefully, after writing marketing plans for a few years, a business owner can sit back and review a series of plans, year after year, and check the progress of a company. Of course, sometimes this is hard to make time for (there is that annoying real world to deal with), but it can provide an unparalleled objective view of what the business has been doing over a number of years.

### **Surf School Traditional Marketing and General Advertising Tips**

Depending on where your school is physically located, out of a surf shop or a school on the beach, you have a number of options on how you do your flyer and/or in shop advertising. The following points address both conditions.

***Employ "Double" Messages:*** A surf school's most common ads should use a tactic called sending "double messages." What this means is an advertisement might show a beginner or small group on the beach receiving instructions. A better ad might be the first picture plus a picture of the instructor standing in the water close to a student that has just stood up for the first time. Another example might be an add that showed a

beginner riding a small wave with a caption that said, “learn to surf now.” In either case the reader will receive the double message.”

***Sanitize the images:*** Conventional wisdom holds that pictures of beginners receiving directions or a group going in the water with an instructor are good for advertising. A slight change in the picture that included an instructor and other students cheering someone who has just stood up might add additional emphasis. This situation happens all the time during a beginner lesson and it’s a great reinforcing image, especially among beginner students.

***Stay out of the firing line:*** Every instructor knows advertising can be a cutthroat business. But in successful surf school businesses, the goal is to get your message across without causing waves from the competition. What you don’t want to happen is to advertise so much that your competition complains to the local government’s better business bureau or city council about your school. Complaints can take any form from safety concerns on crowded beaches, business license/insurance issues, or even unapproved advertising signs within the city limits or on the beach. Low impact advertising could be an informational flyer posted by a local shop owner, a magnetic painted sign on the side of your vehicle, or a web site. In all cases, keep your advertising focused on the positives of your school, such as NSSIA certified instructors or the NSSIA school accreditation without mentioning any competition.

## **Intellectual Property**

In every business, it remains important to know and observe intellectual property (IP) rights because even unknowing violations can have huge consequences. The most common type of IP affecting surf schools and surf instructors would be **trademarks** (protection given to a name, phrase, or symbol to distinguish one person’s services or goods from another). **Copyrights** (protection given to original works of authorship, such as music, books, photographs), and **patents** (protection given to new inventions, discoveries, or designs) may also affect your business. While copyrights and patents are good for a number of years, trademarks can be indefinite if properly renewed. The following paragraphs are for information only. If in doubt, consult an attorney.

Before deciding on a business name, be sure to check whether someone else has registered a trademark for that name. The general rule is that the first person or business to *use* the mark in trade owns the trademark, not necessarily the first person to try to *register* the mark. This means that even if the trademark is not officially registered, if another business is already using the same name in a similar type of business, they may successfully stop you from using that name. (Owning an internet domain name is not necessarily “using” a mark, especially if the goods or service do not bear that name.) Start your research using US Patent and Trademark Office’s ([uspto.gov](http://uspto.gov)) electronic search system (“TESS”), but don’t neglect to use state government websites dealing with business registrations (probably the Secretary of State’s office), general online search engines, yellow pages, and other sources as well.

There are several categories, or “classes”, of goods and services that can be registered as a trademark, so it may be possible to use a name that is a registered trademark for an unrelated business. Likewise, it may be possible for another business to use your name if there is no chance of your goods and services being confused for theirs. For example, if

someone owns a trademark for “Rise and Shine” to sell drywall screws, you may still be able to use “Rise and Shine” for your surf school.

You can apply to register a trademark with the federal government for \$275-\$375 (per class) in fees, in addition to any professional services (attorney) you might use to complete the application. State trademarks fees are significantly less, but may be more difficult to enforce outside the state of registration. In California, the fee is \$70 per class. That being said, it’s a good idea to apply for a registered trademark if you want to stop other businesses from trying to sell goods or services with the same name in the future.

Likewise, failure to observe copyright laws may cost your business. Be careful to use copyrighted material (songs, photographs, videos, text, etc.) only with the appropriate permissions, especially on your business’s online material as it is more easily found. In some cases, businesses can be liable for substantial damages to the copyright owner for violating the copyright. Titles, names, and slogans are not protected by copyrights.

A copyright exists from the moment the creation takes tangible form. Practically, many “authors”, i.e., creators of the original work, simply put a © symbol on their original work, along with the year of creation and the owner’s name, though the symbol does not necessarily indicate registration at the U.S. Copyright Office. A copyright does not need to be registered to exist, though registration has some benefits if you plan to enforce the copyright later. See [www.copyright.gov](http://www.copyright.gov) for more information or to register a copyright.

Patents protect inventions and designs, but only for a certain period of time, usually seventeen years or less. After that, the invention or design becomes available to the public to use. If you invent or design something unique (e.g., a shark-repelling sunscreen formula made from bamboo) and want to protect it from being available to the public (to make and resell) for a few years, consider filing a patent application. See [www.uspto.gov](http://www.uspto.gov) for more information.

### **In Shop Marketing**

Marketing is not just what you sell; it's also how you sell it. It does matter how and where you display your advertising. How your store looks is sometimes more important than what you are selling, particularly when you sell lessons. Is your store entrance inviting? Are your tables and wall displays easy to get to? Are you telling a good visual “story” with your displays? Visual marketing and merchandising takes your consumer from the display or display ad to the lesson and hence the cash register. Encouraging lessons through creative color and commercial ad design is a key element to keeping a customer interested.

Here are a few goals to keep in mind with VM for surf lessons (visual advertising)

- Create excitement to draw your customer into your world
- Stimulate all 5 senses if possible – attract not only with sight (such as surfing videos of lesson videos near your ad) but smells (aroma therapy but not too strong), touch, sound (watch the music in your stores as it may scare the moms and the dollars they are attached to away).

- Plan! What is your traffic flow? Do I have the promotional lesson display in a place where it will be immediately seen? Set a clear image to your end result
- Demographics – the who and what. Understand and focus on who are you attracting and what are you selling them
- Be inspired! Your ads should always imply that anyone can learn and it's never too late.

Another concept is to think in terms of KAOS in your advertising

- Kinetic – depict motion, not just static imagery
- Assortment – show depth in your presentation of multiple pictures and having fun
- Over Communicate – Carry a sales theme throughout the entire store. Remember that surf lessons equate to surf equipment sales.
- Sale! – Again, your end result is to attract students (and eventual merchandise sales) by leading the potential customers through the entire culture. Make sure your advertising promotes not only merchandise, but also the culture of the sport.

### **Seasonal Issues and Staff Help**

Unless you live in Hawaii, most seasonal issues will always be a problem. You must keep your continuing costs low so you don't run out of money during the off-season. One of the biggest issues is staff help. It's tough to keep good help once the season ends and you don't have any lessons to give. Many schools simply close down and then start up again in the spring. Other smaller schools operated by a single individual can concentrate on private lessons or trips with clients to warmer climates during the winter months. For best results, try to find temporary staff that you can rely on, are experienced, and can help at least on weekends during the summer months. Be very careful about hiring young surfers that are more on surfing than giving lessons, as you will usually get what you pay for. Spend a little more and you can expect more from those you hire.

Private winter surfing safaris to places like Costa Rica, particularly with noted surfers, have become very popular in recent years. Again, you need to make sure you have insurance coverage plus have the travel details worked out prior to pursuing this business venue. Some schools have invested in creating surf vacation spots in exotic places aimed specifically at those beginners who want a winter vacation where they can learn to surf.

### **Start-up Costs**

Licensing and insurance costs have already been addressed. Other than advertising, there isn't much else outside of equipment. Equipment should consist of boards, leashes, a board rack or stand for the beach, plus some wax. Rashguards, wetsuits, and other similar items are useful but need to be cleaned on a regular basis. Another good idea if you have it is a pop-up beach tent to block the sun and provide a place to rest and get out of the wind if it comes up.

Schools often start with a few old boards the owner has in his garage and expanded from there. This is the cheapest way to get into the business, but you need to become more professional focused as soon as possible if you are to succeed over the long term. A number of surf schools are run by surfboard shops using rental boards for their lessons. Most professional surf schools quickly progress from there to using boards specifically aimed at beginners for their lessons. This means that the boards are similar looking, usually harder to damage, and soft tops to make them “beginner friendly”. Soft surfboards are definitely the way to go for beginners to avoid injury to themselves, other students, and their instructor.

Another point on soft boards is that some brands don’t require wax. Waxing 20 boards a day can become a task in itself. Schools can purchase these boards at very reasonable rates and their durability is very good. Additionally, they are easily stacked and hauled back and forth to the beach with less worry about being damaged.

### **Employees and Independent Contractors**

If you have people working with or for you, you have some responsibilities to them and to the government. The many laws that affect employers and employees that are too extensive to include here, and they often vary between states, but here are a few guidelines that may help:

- You need an Employment Identification Number (EIN), which is free and can be filed online and received instantly on the IRS website. (The exception to needing an EIN is if you are a sole proprietor and do not plan to have employees.)
- When hiring a new employee, be sure the application and interview questions are directly related to their job duties.
- Keep detailed records for all employees, including applicants you don’t hire.
- If your employees are working with children, it may be a good idea to do a more extensive background check. Various online services can assist with this.
- The Americans with Disabilities Act (ADA) requires an employer to make reasonable accommodations for disabled employees. Currently, the ADA applies to employers with fifteen or more employees.
- Do not discriminate based on race, religion, ethnicity, physical or mental disability, medical condition, marital status, gender, or sexual orientation.
- Be sure the people you hire are eligible to work in the country by filling out IRS Form I-9 (Employment Eligibility Verification).
- If you are hiring someone under 18, be sure they are eligible to work for the job you’ve given them. Generally, no one under 18 can do dangerous work, and the restrictions are greater for children under 15 or 16. Check your state’s child labor laws.
- Be sure to pay at least minimum wage, which varies by state. When it comes to employees, you often get what you pay for, so consider paying more to hire and retain better employees.

- You may be required to post one or more informational posters in your place of work. The Dept. of Labor's website has a poster requirement page for more information: <http://www.dol.gov/elaws/posters.htm>
- As a general rule, spend time training your employees in all your policies and procedures and record that they were properly trained. This is sometime done by having employees sign a form that that they will abide by policy, such as your sexual harassment policy.

In addition to sales and income taxes, there are also several tax obligations that arise from having employees, depending on your type of business (SP, LLC, corporation, etc.) and the number/type of employees. These include: employee withholding allowances, quarterly estimated tax payments, Earned Income Credit eligibility notices (Notice 797), and unemployment tax. Have an accountant or lawyer can set you up with the required forms and procedures.

Surf school owners need to understand the consequences of hiring additional instructors as employees or as independent contractors. The vast majority of surf schools hire their instructors as independent contractors. However, with new laws regarding the amount of compensation allowed before tax reporting and withholding is required, plus laws governing health insurance provisions, school owners should carefully research what they offer to employees before making hiring decisions. Currently, any employee who works over 29 hours per week, regardless of their status as a regular employee or independent contractor, must receive health insurance coverage.

An "employee" is a person who is hired by another person or business (an "employer") for a wage or fixed payment in exchange for personal services and who does not provide the services as part of an independent business. This definition can be contrasted with an "independent contractor" who is a person or entity who, **as part of an independent business**, becomes obligated to provide surf lessons or other help for a price.

One way to avoid many of the employee-related hassles and tax obligations is through hiring independent contractors, though beware that the IRS has pretty strict classifications of who can be considered an independent contractor, and you may be penalized for trying to get around your obligations to someone who should really be classified as an employee. For example, you may be able to hire independent contractors to help supervise student safety during surf lessons, but if you have them work in the surf shop during slow days, they might be a more traditional employee. Contractors might be used for professional services like designing, cleaning, or modeling. As a general rule, the more control over an individual's time and tasks you have, the more likely it is that they are an employee.

You are required to issue a 1099 form to any non-employee if you paid them over \$600 in a calendar year for their services. Also consider that independent contractors may work for other employers.

IRS Form SS-8 can be used to determine whether an individual is an employee or contractor, and can be filed by the employer or employee. IRS Publication 1779 identifies the main factor of the determination. When determining whether an individual is an employee or independent contractors, the IRS looks at:

- 1) Behavioral Control (Does the firm have close control over how the work is done or is it just concerned with the outcome?)
- 2) Financial Control (Does the worker have their own expenses? Do they incur gain or loss separate from firm?)
- 3) Relationship of the Parties (Are employment benefits like paid leave and pension given? Do the firm and worker have a written contract that identifies the relationship?)  
The contents of a written contract may be the most significant factor in the determination.

### **Compliance with Employer's Rules**

If an employer expects an employee to comply with the employer's rules and regulations, particularly as they relate to teaching board safety, surf etiquette, and what to do in emergencies, it should be obvious that the employer must communicate those rules and regulations to the employee. While this can be done orally, it is far preferable for the employer to provide clear written rules in the form of an employee handbook or other forms that the employee must sign. An employee handbook explains the employer's rules and policies and how they may be changed from time to time. While the NSSIA can provide general guidance, it is advisable to have your individual employee handbook reviewed by an attorney who is familiar with the employer's state and federal employment laws.

### **Termination of Employment**

The termination paragraph of the Employment Agreement specifies the amount of notice that must be given if either party wishes to terminate the agreement. In addition, the amount of compensation to which the employee will be entitled (if terminated) can be stated.

This program allows the agreement to provide for employment "at will", which means that either the employer or employee can terminate the employment relationship at any time, with or without notice. Traditionally, in the absence of a written agreement governing the duration of a person's employment, an employer could terminate the employment relationship at any time, for any reason (other than a discriminatory or illegal reason) with or without notice.

While many states have severely limited or restricted the employment-at-will doctrine, this doctrine is still the law in some states. In these states, employment-at-will is still presumed unless there is an agreement establishing the duration of the employment relationship. In most states, any such agreement (for a fixed duration) must be in writing if the term of the agreement exceeds one year. Thus, if the employer wishes to have the option of terminating the employee at any time, it is essential that the employment agreement be of indefinite duration.

For more information regarding the implications of an employer's failure to clearly maintain an employee in an "at will" status, a lawyer should be consulted. A termination by an employer should be conducted under the advice of a lawyer familiar with the facts. A termination that is handled inappropriately can provide the basis for discrimination or other employment lawsuit.

## **Employment Agreement**

The Employment Agreement is an agreement between an employer and an employee that specifies the rights and obligations of each party to the agreement. Please note the following cautions:

- If the employer expects the employee to abide by the agreement, the employer must also follow the agreement.
- Lawsuits by employees against employers with respect to employment matters are increasing. Such suits are based on employment agreements as well as other matters such as injuries and discrimination. Many aspects of these lawsuits are ambiguous and uncertain because they are based on an oral contract -- the employment terms were not put into writing. Although a written agreement will not eliminate the possibility of a lawsuit, it may help to reduce that possibility because it codifies many of the terms of employment into an objective format.
- Employment laws vary from state to state and change as courts interpret the law through court decisions.

### **Typical Employment Agreement (This example is meant only as a guide and should be carefully examined and completed to meet your business's needs.)**

This EMPLOYMENT AGREEMENT (the "Agreement") is entered into, by and between .....Surf School. (the "Company") and ..... ("Surf Instructor") as of ..... (the "Effective Date").

WHEREAS, the parties desire to enter into an agreement to reflect the Surf Instructor's position and role in the Company's business and to provide for Surf Instructor's employment by the Company, upon the terms and conditions set forth herein.

WHEREAS, Surf Instructor has agreed to certain confidentiality, non-competition and non-solicitation covenants contained hereunder, in consideration of the benefits provided to Executive under this Agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Employment. The Company hereby agrees to continue to employ Surf Instructor, and Surf Instructor hereby accepts such continued employment and agrees to perform Surf Instructor's duties and responsibilities, in accordance with the terms, conditions and provisions hereinafter set forth.

1.1 Employment Term. This Agreement shall be effective as of the Effective Date, and shall continue until .....(normally end of season) unless the Agreement is terminated sooner upon decision of the Surf School.

1.2 Duties and Responsibilities. (see the suggested Surf School Lesson Plan). Each Surf Instructor will be required to sign statements that they will follow safe instruction guidelines as specified by the National Surf Schools and Instructors Association and provided by the Company.

1.3 Extent of Service. During the Employment Term, Surf Instructor agrees to use Surf Instructor's full and best efforts to carry out Surf Instructor's duties and

responsibilities identified herein with the highest degree of loyalty and the highest standards of care and, consistent with the other provisions of this Agreement. Surf Instructor agrees to devote substantially all of Surf Instructor's business time, attention and energy thereto.

1.4 Compensation. During the Employment Term, for all the services rendered by Surf Instructor hereunder, the Company shall pay Surf Instructor a fee of ..... for instruction as indicated in the lesson plan or described herein. No other compensation shall be covered under the terms of this contract.

2. Termination. Surf Instructor's employment shall terminate upon the occurrence of any of the following events:

2.1 Termination Without Cause. The Company may terminate Surf Instructor's employment with the Company at any time without Cause upon not less than 6 days' prior written or verbal notice. No termination compensation will be provided other than that already accumulated by the Surf Instructor.

(a) Payment of compensation described above shall be made within 7 days after Surf Instructor's Termination Date.

2.2 Disability. The Company may terminate Surf Instructor's employment if Surf Instructor is unable to perform the essential functions of Surf Instructor's position with the Company, with or without reasonable accommodation, by reason of physical or mental incapacity, **or failure to maintain necessary certificates or credentials** for a period of 5 consecutive days ("Disability").

### **Workers' Compensation**

Workers' compensation is a mandatory type of business insurance that provides employees who become injured or ill while on the job with medical coverage and income replacement. It also protects companies from being sued by employees for the workplace conditions that caused such an injury or illness.

Businesses such as surf schools are required by law in the United States to pay for the medical treatment and lost wages of full or part time employees who suffer job-related injuries or illnesses. In order to avoid crippling expenses in this regard, companies purchase workers' compensation insurance policies of one kind or another. In most instances these laws do not apply when employees are paid on a contract basis, such as payment on a part time per-lesson basis. Individual laws in each state should be checked for specific applicability.

Although provisions of each state's laws differ greatly, the underlying principle is the same — that employers should assume the costs of injuries, illnesses, and deaths that occur on the job, without regard to fault, and partially replace wage income lost. While income replacement under workers' compensation is usually a percentage of the actual wage, it is counted as a transfer payment and thus is not subject to federal income tax.

Given the mandatory nature of workers' compensation coverage and the potential expense involved, the cost of workers' compensation insurance policies is a huge concern for small business owners. In fact, workers' compensation premiums stand as most companies' second largest operating expense, after payroll. These rates are based on the

employer's total payroll, the classification of the employees (the relative riskiness of their work activities), and the employer's accident record.

Small business owners have less control over the cost of workers' compensation coverage than they do over health insurance costs. State legislatures set the level of benefits and employers pay the full cost, so medical cost-containment strategies like co-payments do not apply. Some insurers avoid handling workers' compensation policies for small businesses because they feel that smaller companies lack the funds to provide a safe working environment. In general, the rates depend upon the type of business, number of employees, and company safety record.

Penalties for failing to carry workers comp insurance policies can be severe. In general, business owners who are neglectful in this manner can be held liable for the medical expenses incurred by the worker in their employ.

### **Types of Coverage Available**

There are three basic methods available for employers to obtain the required workers' compensation protection: state insurance funds, private insurance, and self-insurance through insurance pools. The latter option—which involves setting aside funds in anticipation of workers' compensation claims, rather than purchasing insurance—is seen as a cost-saving method for safety-oriented firms. In the states that permit it, many large employers now self-insure, and many small businesses form groups to insure themselves and decrease the risks.

### **Student Mix**

Other sections of this course describe the different learning environments and training approaches based on the age of an individual. When selecting instructors for a particular group lesson, make sure those teaching are compatible with the students being taught. For example, sometimes it's more desirable to place a female instructor with adult female instructors. Other times you want your most skilled instructor to be assigned to a non-athletic student that may need additional help. Segregating student's by ages is still another approach. Since not all your instructional staff will be fully trained to deal with segregating and assigning, it's best to have a NSSIA certified instructor trained in these issues perform this function.

### **Other Day-to-Day Operational Issues**

Posting a daily schedule or a regular schedule of instructor activities before, during and after the lessons will ensure everything runs smoothly. Pre-training activities, such as who is setting up or hauling out boards on the beach, who takes registrations, who is responsible for ensuring the student is stretched out, has the proper wetsuit provided and put on, had the proper board size assigned, who is responsible for any liability protection needs, who performs the overall group presentations and the individual training for each person or group, who will take pictures, who will perform the class breakdown, putting boards away, and finally, who is in charge of making sure the beach area is cleaned up after your classes. You certainly don't need a complaint that your school is causing a mess on the beach. These are all things to plan out ahead of time.

Another area to plan on will be how instructors are paid. Will you need to extract state and federal withholding taxes, Social Security and Medicare from their paychecks, etc.?

Remember, should the Internal Revenue Service audit your books and these issues are not addressed, you will quickly find yourself in serious financial trouble. Additionally, if your surf school is part of a retail outlet, you will need to separate and amortize products used for your school from those you plan to sell. An accountant can help with this.

### **Contracts to Buy/Sell/Trade/Rent**

No matter what goods or services you are selling, as a business owner you will need to be familiar with different types of contracts. You may be able to find many examples of the contracts you need online. As a general policy, **put your agreements and contracts in writing**. It often seems more comfortable and friendly to do business on a handshake or a fist bump, but it may end badly for everyone if something goes wrong, which it often does. Parties to a contract can set any terms they wish as long as it's not: illegal, seriously unfair (unconscionable), or against public policy. Courts interpret what is written *in* the contract first before looking at other claims or circumstances, like what was said. When you are writing or reviewing agreements, particularly employment agreements and sales agreements, anticipate and address problems you might run into when dealing with other vendors or the public. Thinking about (and agreeing on) unpleasant issues *before* they arise will save everyone the agony of uncertainty, argument, and possible litigation. If you don't understand the terms of a contract or if you don't feel comfortable writing one, consult an attorney.

The Uniform Commercial Code (UCC) outlines the general rules of business contracts and agreements, and applies to everyone doing business, even the guy you bought your board from on Craigslist, although "merchants" are often held to a higher standard. The UCC is fairly universal, although there may be a few state variances in some areas, and it can be found online.

Become familiar with rules of offer and acceptance, especially when advertising. To be safe, set an expiration date for any special offers or coupons so that customers do not try to use them years later. Be sure your advertising is accurate and does not make incredible claims. (Humor in the form of sarcasm and hyperbole does not translate well in written advertising.) If shipping/receiving goods, know who bears risks during shipping. Also, the goods you sell have some implied warranty (that is does what the ordinary customer thinks it does, and that it fits the buyer's purpose). Some warranties may be disclaimed or limited *in writing*. Also watch what express (spoken or additional) assertions you give as a seller – "if it breaks, we will fix it for free".

### **Payment and Collection Issues**

Cash – Recent laws require you to report any cash payments of over \$10,000 (even if they are over a period of time by the same person). Use IRS Form 8300.

Checks – You are not required to accept checks, but you may find it inconvenient not to do so. If you accept them, have a written check-acceptance policy, have it available to your customers, and train anyone who may be accepting them. To avoid the hassle (and loss of money) from bad checks, you may want to take precautions like accepting only preprinted checks, local checks, checks signed in your presence, no third-party checks, check ID, or limit the amount you can accept by check. If you accept a check you may record the name, address, and phone number, but you may *not* record a credit card

number as backup unless it is for a deposit. You may collect a fee for a bounced check (usually \$25-\$35, but it varies among states), but you need to send a certified letter demanding payment for check, the service charge, and the cost of mailing before pursuing it in court. DO NOT refund checks before they have cleared, as this is a common scam technique.

Credit Cards – Accepting credit cards open you up to more customers, but each transaction comes with an expense, usually 2-4% of the total. Credit card processing is more accessible than ever. Services like Square and PayPal allow just about anyone to take credit cards payments online or even on the beach with their smart phones. By law, you cannot charge a surcharge for using a credit cards, but you may give a discount for cash, if it is the same for all customers. DO NOT write personal info on a credit card charge slip, but you can require the payer to show personal ID or info when it's a deposit or part of a shipping/delivery exchange (incidental). If you have electronically printed receipts, DO NOT print more than last 5 digits or expiration date on the card. If you choose to go after a bad payment, do not be threatening, profane, or untruthful, as many new debtor-protection laws protect debtors from aggressive debt-collection strategies and you may get into trouble.

For all types of payment, have a written refund policy, especially if you require a deposit for rentals and/or lessons. Be consistent with enforcing it as much as possible. General practice is to allow customers to return defective goods for a defined period of time, and goods sold “as is” or “no returns” are fine, but they must be marked.

### **Computer Protection for Your Business**

Businesses need to protect themselves from computer based attacks. In the surfing world, a common attack is to have someone contact you about setting up lessons for a large group from out of the area. The message is usually general, not mentioning your school or you personally, and not stating where your school is located. They always request if you accept credit cards so they can pay. Don't be fooled, this is a scam. To better protect your business and accounts, here are some simple rules to follow:

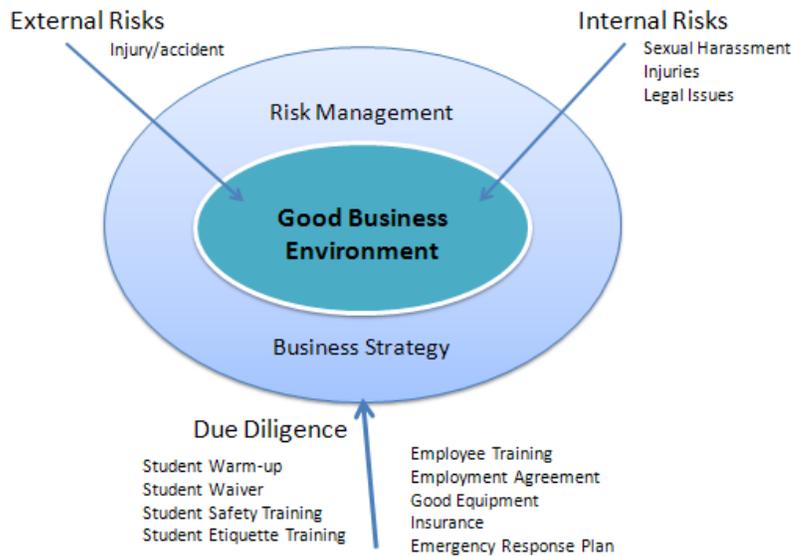
- Do not open any links on messages that show up in your spam account, even if they have a familiar name to them. Directly contact your friend first, particularly if it is a facebook message in spam..
- Change your passwords to a pass phrase of at least 10 characters and numbers, plus change it every 180 days.
- Do not use the same password for multiple accounts.
- Do not open any email links from someone you don't know
- Do not provide credit card information for collecting funds. Use paypal or any transaction service to collect for you.
- Make sure you do bank transactions using a secure https://... Browser.
- Always assume your personal computer has been compromised and others are viewing your keystrokes.

## Risk Reduction and Mitigation

What is risk analysis? The classical definition of risk analysis is one that describes it as a process to ensure that the security controls for a system are fully commensurate with its risks. It is a formal procedure to identify threats and vulnerabilities, analyze them to ascertain the exposures, and highlight how the impact can be eliminated or reduced.



Risk analysis is an approach and a set of tools for



systematically comparing the social, economic, human health and other environmental costs and benefits of decision options. Risk analysis includes problem definition, hazard and exposure assessment, risk characterization, risk communication and decisions affecting risk management.

Risk analysis is multi-disciplinary, drawing on a range of basic scientific skills to generate data, and a wide array of other skills to communicate, evaluate, interpret, and act on the assessment. Risk analysis is integrative and transparent during training delivery. It provides an ideal framework for bridging among the students, instructors, surf schools, and the NSSIA.



Although risk analysis involves weighting between alternatives and mathematical calculation of risk, actual calculations are not as important to the surf school industry as are the associated techniques of risk management: evaluating risks and choosing mitigation techniques that reduce the risk an instructor or surf school business might face. For the case surf instruction, risk reduction and mitigation compares the potential for problems and selects contingencies necessary to both avoid injury to students and at the same time minimize the instructor and to the school itself.

## **Risk Reduction Analysis Techniques**

The risk assessment is the technical part of the process. It is a quantitative process to determine likelihood that board training will result in harm. Its purpose is to determine what medical, legal or economic consequences might occur, and what the likelihood is of their occurrence. In many cases, broad agreement concerning this risk negates the need for formal risk assessments.

Risk assessments do:

- Estimate the probability that an accident may occur.
  - What can go wrong (hazard identification)
- Estimate the medical, legal and economic consequences.
  - How likely can it occur (crowd conditions/swimmers/hazards)
- Estimate the potential for equipment damage.
- Express uncertainty---about the equipment, outside surfer influences, the instructor error factor, and the methods used.
- Determine the risk associated with a variety of mitigation strategies.
  - Steps to control hazard interaction including better controls
  - What are the available resources (instructor/lifeguard availability/emergency contact)
- Provide an organized, systematic presentation of the hazards and the consequence.
- Provide a basis upon which recommendations can be developed for school/business/instructor policy makers.

Risk assessments do not:

- Establish the acceptable risk level.
- Describe with certainty when or if an accident will take place and what the damage will be.
- Determine policy. That is the job of business policy-makers.
- Provide the only input into decision-making.

## **Risk Management**

Risk management is the decision making process. It is a process for analyzing and recommending options for mitigating areas of concern identified through risk assessment. The analysis of risk mitigation options may vary due to the differing nature of conditions and other issues.

In the case of surf instruction, a formal numerical estimate of risk is not necessary. Simply having a plan in place to address all potential contingencies might cover the spectrum of risk. Related to surf instruction, risk management includes:

- Create the Lesson Plan

- Start Time
- Duration
- Potential Location
- Surf Conditions
- Level of Students
- Critical Delivery Tasks
- Assign Instructors
  - Student/Instructor Ratio
  - Level Required
- Assign Risks and Uncertainty
  - Budgetary (including payment)
  - Injury/Accident
  - No show/cancellations
  - Bad weather/surf
  - Assign costs
- Sensitivity Analysis
  - Create the Contingency Plans
  - Student Feedback
  - Assessing Results Risk Communication

### **Countermeasures/Mitigation**

Insurance  
 Student Waiver  
 Verbal Extreme Sport Warning  
 Student Etiquette/Safety Training  
 Instructor Training  
 Employment Agreement  
 Sexual harassment Policy  
 Contingency Plan  
 Good Equipment (school/office)  
 Trash Bag  
 First Aid Kit  
 Sun Screen

### **Emergency/Contingency Planning**

Emergencies can be minor or significant. The following guidelines are an example of the type of plans necessary to have in place should an accident happen.

Initially, it is up to the instructor in the water or on the beach to assess the situation. He or she is immediately on the scene and must decide the initial response to an emergency.

In the event of an injury, the instructor must help the student directly to shore. If other instructors are present, the class can continue. Otherwise, all students are to go in to shore.

If minor treatment is necessary, and the student is an adult, administer first aid according to guidelines provided by the Red Cross during first aid training. If the student is a minor, first aid should be administered by the student's parent or guardian.

In the event of a serious emergency requiring professional treatment, the instructor must take immediate action. Get to the student and assess the situation. Move all students into the beach. Call emergency help or have someone call emergency help while administering immediate first aid from the first aid kit or resuscitate as indicated until EMS arrives.

In the event of bleeding, follow the rules when blood is showing. If emergency facilities are immediately available, transport the student to the facility.

In all cases, fill out an accident report form recording conditions and treatment provided as soon as possible.

### Written Policies

To ensure consistency, efficiency, and to protect your business from legal hassles, it's best to have your business policies in writing. This includes policies affecting your *customers*, such as returns/refunds, cancellations, using coupons or special offers, etc., as well as *internal policies*, such as your sexual harassment policy, employment policies, exposure to bloodborne pathogens policy (ECP), etc. Written policies project professionalism. These written policies do not need to be long, but they need to be clear and understandable. The more comprehensive, the better, because you, your employees, and your clients are assured they are being treated consistently across a wide range of circumstances.

### Risk Communication

Risk communication is the process of exchanging information concerning risk with interested parties (e.g., other instructors, school director/owner, NSSIA). Risk communication includes the active exchange of information throughout the risk analysis process with involved parties and the communication of the conclusions of risk analysis to all interested and affected parties. This process includes routine interaction with the NSSIA community to ensure the validity of our analysis process, methods, and assumptions, as well as allowing the NSSIA to improve instructor training objectives as necessary.

### Requiring NSSIA Certification Training as a Risk Reduction Technique

Many schools hire instructors based on how well they interact with students regardless of their experience or background training. Requiring an instructor to have NSSIA training, or even a background check, might be considered an unnecessary hassle. Unfortunately, a business can't afford to be sued by an unhappy student, or someone who gets injured, or even someone who thinks an instructor committed what they considered improper behavior. You can tell your instructors whatever you want, but the final result will still be it's your business, and you are responsible for your employees conduct.

### Risk Acceptance

Safe Students  
Good Business Due Diligence  
Good for the Sport

There is a principle in business law called due diligence. Basically what it means is that if the owner or owners use due diligence in protecting their business, then they will likely receive the benefit of the doubt if something goes wrong. This could be requiring instructors to be certified so the owner can guarantee the instructor has been taught proper business/student training practices and they know what is safe, what isn't, and how they need to handle themselves with a student. Following the proper techniques, even if something does go wrong, is about the only way you can protect yourself in the long run.

If the law requires background checks, then don't hedge, make sure you have them done. If you don't and something goes wrong, you will share the blame. Even if the law doesn't require it, whenever you have employees dealing directly with kids, you will share the responsibility if you have hired a child molester without taking the time to check on the employee's background. Manage your risks and ensure your instructors are trained and safe investments.

### **Unfair Business Practices**

While small schools or individual instructors may not have this problem, it's important to be familiar with antitrust laws so as to protect your business from becoming a victim and to avoid non-compliance. It is also important to know where to go for assistance if government regulations are unfairly impacting your business. This is particularly true if your school is suddenly subjected to intrusive regulations by your local government, or by new restrictions imposed on federally controlled beaches. In the US, the Small Business Regulatory Enforcement Fairness Act (SBREFA) was passed in 1996 to make federal agencies more responsive and offer small businesses a tool to hold their government more accountable.

The SBREFA gives small businesses:

- more influence over the development of regulations;
- additional compliance assistance for Federal rules; and
- new mechanisms for addressing enforcement actions by agencies.

### **Development of Regulations – The Regulatory Flexibility Act**

Small businesses' most significant mechanism for influencing the development of federal regulations is the 1980 Regulatory Flexibility Act (RFA). The Small Business Administration's (SBA) Office of Advocacy provides a guide to the law. This law requires agencies to take steps to collect input from small entities on regulations and to determine whether a rule is expected to have a significant economic impact on a substantial number of small entities. Moreover, federal agencies are required to identify alternative regulatory approaches for small businesses, small governmental jurisdictions and non-profit organizations.

Many agencies have failed to comply with the RFA over the past 16 years, and small businesses found little recourse in the courts due to the absence of any enforcement mechanism. The Small Business Regulatory Enforcement Fairness Act corrects that by permitting judicial review of agencies' compliance with the Regulatory Flexibility Act.

Whenever a small business is adversely affected or aggrieved by an agency rulemaking for failure to comply with the RFA, the small business may seek review of the rule in court. The RFA now also applies to previously exempt interpretative rulemakings promulgated by the Internal Revenue Service that have information collection requirements.

The Office of Advocacy will have greater responsibility and influence under the RFA because the new law gives the Chief Counsel for Advocacy enhanced authority to file amicus briefs in court proceedings involving an agency's violation of the RFA.

The following issues are subject to judicial review under the SBREFA:

- the final regulatory flexibility analysis including the agency's efforts to evaluate alternative regulatory approaches and reasons for rejecting or accepting them;
- the agency's effort to collect comments from small entities through a variety of mechanisms;
- the agency's decision to certify that a rule will not have a significant impact on a substantial number of small entities, and the factual basis for the certification;
- the agency's compliance with a requirement for periodic reviews at the 10-year anniversary of every rule or the enactment of the 1980 law, whichever is first.

The law also updates the requirements of a final regulatory flexibility analysis -- including a description of the steps an agency has taken to minimize the significant economic impact on small businesses.

### **Trouble with Big Businesses**

Here are a few additional laws you might want to know that try to limit unfair business practices.

Commercial Discrimination (Robinson-Patman Act of 1936) – Generally, this means businesses cannot injure competition by offering same goods to different buyers at different prices (all things being equal, large shops should not be getting better prices than small shops). [Ftc.gov/bc/compguide](http://Ftc.gov/bc/compguide).

Restraining Competition (Sherman Antitrust Act of 1890) – This law prohibits monopolies by prohibiting agreements between businesses to sell at the same price, restricting how much is sold, or exchanging information that results in price similarity, as well as dividing up a market. Basically, don't collude in order to restrict trade or create unfair competition, and if you suspect others are doing it, you may have a way to stop them.

### **Health and Safety Standards**

The U.S. Dept. of Labor's Occupational Health and Safety Administration (OSHA) oversees compliance with laws regarding employee safety. Generally, if you have ten or fewer employees, you are considered a small business and have less cumbersome regulations. OSHA's ([www.osha.gov](http://www.osha.gov)) website provides a compliance guide for businesses to determine what you need to do and often provides templates for necessary forms. Following OSHA's standards can help protect your employees and protect you from liability in case of an incident. Your state may have additional requirements.

Some important points to remember (regardless of the size of your business):

- You need to protect, as much as possible, your employees' exposure to hazardous and harmful substances, including blood. Surf instructors may be exposed to bloodborne pathogens on the job, so you need to help inform, train, and protect them in the event of exposure. Have a written Exposure Control Policy (ECP), a template of which can be found on the website: <http://www.osha.gov/Publications/OSHA3186.html>. Note that the ECP mandates other forms like training records and sharps injury records.

- You need to display (at least one) OSHA poster in your place of work. These can be downloaded from OSHA's website.
- You need to provide a well-stocked First Aid kit for your employees, including personal protective equipment (PPE), such as gloves, to prevent the spread of disease. The First Aid kit may be the same one used for students and customers as long as it is accessible to all your employees as well.
- You need to provide proper containers for disposal of dangerous substances, including bloody wetsuits, bandages, and sharp objects, and clean or dispose of them properly (NOT in a trash can on the beach).
- All work-related deaths (and hospitalizations of three or more employees) MUST be reported to OSHA within eight (8) hours. Call 1-800-321-OSHA to report.

### **EPA and OSHA Regulatory Review Panels**

The new law requires an extra step for the Environmental Protection Agency (EPA) and the Occupational Health and Safety Administration (OSHA) in the development of regulations. Specifically, the SBREFA requires that the agencies receive input from affected small business through the SBA's Office of Advocacy before proposed rules are published.

When an EPA or OSHA proposal is expected to have a significant impact on a substantial number of small entities, the agency must convene a panel of employees from the agency, the Office of Advocacy, and the Office of Management and Budget to review a copy of the draft proposed rule and related agency analyses under the Regulatory Flexibility Act.

The panel also will collect advice from small business representatives and submit a report to the agency within 60 days of convening of the panel. The agency will then review the report, make any appropriate revisions to the rule, and publish the proposed rule with the panel report as part of the record.

### **Congressional Review**

The SBREFA provides for congressional review of Federal agencies' regulations. Before any rule goes into effect, agencies are required to forward the rule to Congress for review. Major rules--those with a \$100 million impact on the economy or a major impact on an industry, government or consumers, or those affecting competition, productivity or international trade--cannot go into effect until congressional review is complete. Congressional review is subject to a presidential veto. Congress may take up to 60 session days for review and use a variety of mechanisms to delay implementation.

### **Business Forecasting**

According to the US Small Business Administration, maintaining your momentum means looking forward even as you focus on the present. Forecasting and planning are critical to your continued success.

### **Forecasting For Growth: Strategic Thinking**

To be effective as a leader, you must develop skills in strategic thinking. Strategic thinking is a process whereby you learn how to make your business vision a reality by developing your abilities in team work, problem solving, and critical thinking. It is also a

tool to help you confront change, plan for and make transitions, and envision new possibilities and opportunities.

Strategic thinking requires you to envision what you want your ideal outcome to be for your business, then work backwards by focusing on the story of how you will be able to reach your vision.

As you develop a strategic vision for your business, there are five different criteria that you should focus on. These five criteria will help you define your ideal outcome. In addition, they will help you set up and develop the steps necessary to make your business vision a reality.

The following is a list of the five criteria of the strategic thinking process:

- **Organization.** The organization of your business involves the people you will have working for you, the organizational structure of your business, and the resources necessary to make it all work. What will your organization look like? What type of structure will support your vision? How will you combine people, resources, and structure together to achieve your ideal outcome?
- **Observation.** When you are looking down at the world from an airplane, you can see much more than when you are on the ground. Strategic thinking is much the same in that it allows you to see things from "higher up." By increasing your powers of observation, you will begin to become more aware of what motivates people, how to solve problems more effectively, and how to distinguish between alternatives.
- **Views.** Views are simply different ways of thinking about something. In strategic thinking, there are four viewpoints to take into consideration when forming your business strategy: the environmental view; the marketplace view; the project view; and the measurement view. Views can be used as tools to help you think about outcomes, identify critical elements, and adjust your actions to achieve your ideal position.
- **Driving Forces.** What are the driving forces that will make your ideal outcome a reality? What is your company's vision and mission? Driving forces usually lay the foundation for what you want people to focus on in your business (i.e., what you will use to motivate others to perform). Examples of driving forces might include: individual and organizational incentives; empowerment and alignment; qualitative factors such as a defined vision, values, and goals; productive factors like a mission or function; quantitative factors such as results or experience; and others such as commitment, coherent action, effectiveness, productivity, and value.
- **Ideal Position.** After working through the first four phases of the strategic thinking process, you should be able to define your ideal position. Your ideal position outline should include: the conditions you have found to be necessary if your business is to be productive; the niche in the marketplace that your business will fill; any opportunities that may exist either currently or in the future for your business; the core competencies or skills required in your business; and the strategies and tactics you will use to pull it all together.

By working through these five areas, you will begin to get a clearer picture of exactly how your business vision can be accomplished. As your vision becomes more focused, your ideas will appear stronger and more credible. Not only will it be easier to convince others that your idea is a good one, but it will also be easier to maintain your own conviction and motivation when you reach any pitfalls or obstacles in the road.

Overall, you can apply strategic thinking skills to any area of your life. But by making a concerted effort to apply them specifically to your business venture, you will have a much better chance of bringing your vision to life. And isn't that what you want?

### **Turf Battles and “Siloing“**

NSSIA members have a shared goal: deliver the best quality training available worldwide. The NSSIA works best when we cooperate. Turf battles happen everywhere, in government agencies, associations, school systems, surf schools and even among surf instructor certification organizations. Business functions operating as silos are perhaps the biggest hindrance to growth. Silos can be created around an individual, a group, a function, or even a product line. Wherever it's found, the silo mentality becomes synonymous with power struggles, lack of cooperation, and loss of productivity. Always it's the customer/client that is the ultimate loser.

Within the NSSIA, innovation is triggered by a cross-pollination of ideas, such as when the "right people" come up with the right ideas and discover, in the course of conversation, that each has information useful to the other. It's a fundamental building block of the NSSIA. We know that in the combination of ideas creative breakthroughs can happen. When an organization focuses on innovation, it does so by bringing together people with diverse perspectives and expertise, breaking down barriers and silos in the process.

In addition to instructor contributions, nothing is more important in an organization like the NSSIA than staying close and focusing on the end users, our students and those we coach. Unfortunately, within silos, the focus is typically on internal issues rather than on response to customers. We can better focus our organization by sharing marketplace information and customer feedback. In our case, listen to our end users reporting on their experience and then consolidate what was done effectively into something we can incorporate into our training manual. In that way all our members will understand how we can meet or exceed our customer expectations.

Everyone needs to contribute their best ideas when they discover something, and any “siloing” or negative marketing between NSSIA schools or any schools for that matter is frowned upon. Emphasize the positives of your program, not the negatives of others.

### **The Bottom Line**

If you've gotten this far, you are well on your way to becoming a successful surf school owner, great instructor, mentor or coach for others. What you have learned herein are proven techniques for having great success in your profession. A true professional is someone who not only knows how to do it right, but truly cares about those who he or she imparts their knowledge to.

**Helpful Resources:**

- Your Secretary of State's Office and Website
- Your local Small Business Administration (SBA) website or office.
- The Department of Labor Website ([www.dol.gov](http://www.dol.gov))
- Occupational Safety and Health Administration Website ([www.osha.gov](http://www.osha.gov))
- Uniform Commercial Code (various resources, use a search engine)
- The Internal Revenue Service Website ([www.irs.gov](http://www.irs.gov))
- *Tax Guide for Small Businesses*, IRS Publication 334.
- U.S. Patent and Trademark Office ([www.uspto.gov](http://www.uspto.gov))
- A do-it-yourself small business start-up or management book may be a good investment, especially if there is one specific to your state.

Many online resources will offer to help you file or download certain forms for a fee, but in many cases the same information is freely accessed from a government website. Check there first.