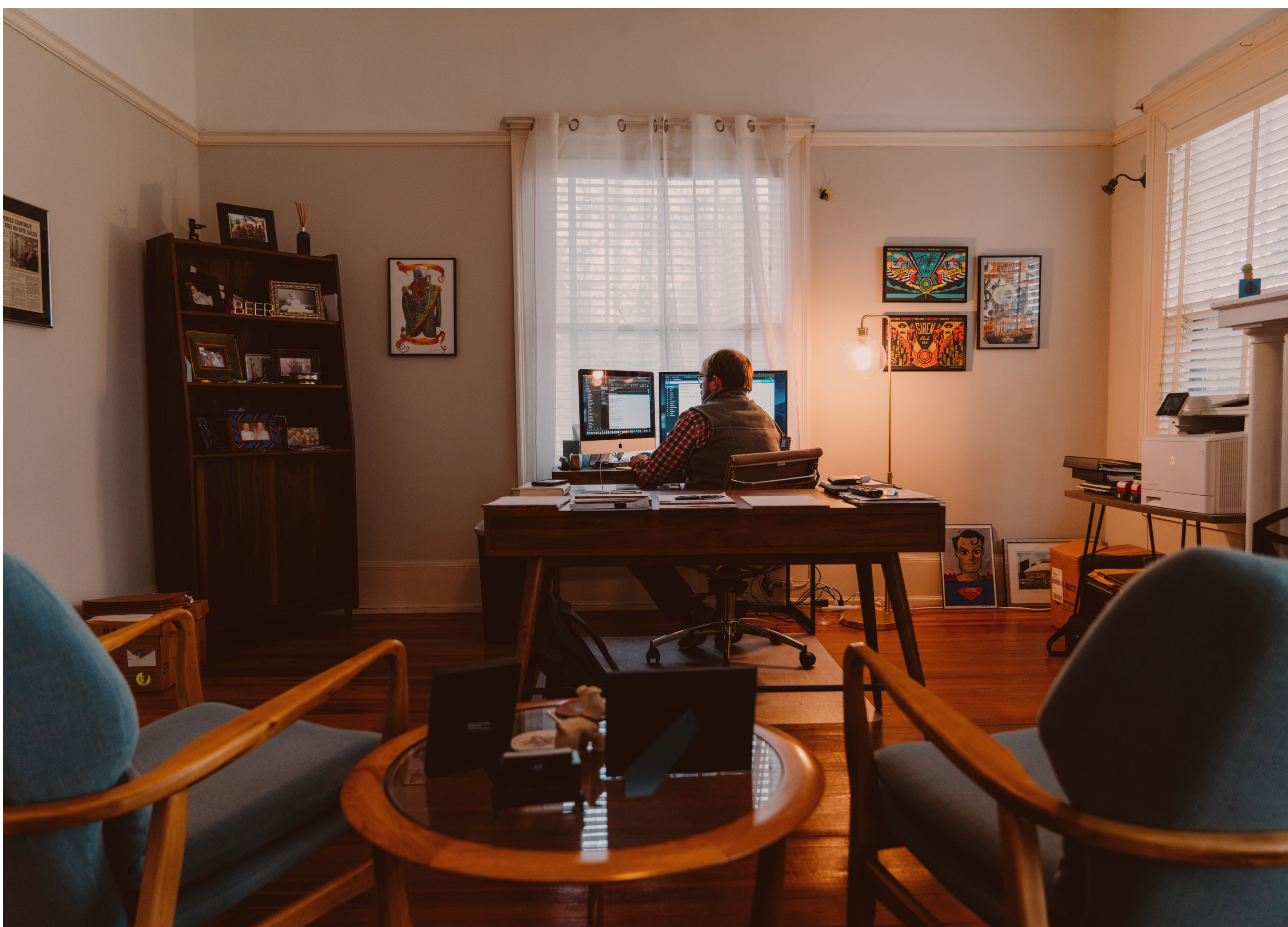
PREPARING TO RAISE CAPITAL

Raising capital can be very exciting, but it can also create a great deal of uncertainty and anxiety. Before you approach a bank, an individual investor, or a more institutional equity investor, be aware that these people typically expect a considerable degree of formality, organization, and structure around your company.

Banks and investors also want to see some combination of the following: (1) an experienced management team with industry success; (2) a company with a sustainable competitive advantage; (3) a well-thought out strategy for delivering on that growth potential; and (4) a "clean" business without legacy risks. Below is a brief overview of a number of issues you must address before engaging with banks and investors.



RISK ASSESSMENT

Before you submit your business plan to a bank or an investor, perform a "stress test" of the business plan. Rigorously test assumptions and assess risks by trying to view your business plan and pro forma numbers from the perspective of an outsider. Make revisions to your business plan as necessary based upon the stress test. In addition, make sure that all information and data contained in your business plan is relevant and up to date.

DEVELOP TWO USE OF FUNDS TABLES

Determine not only the ideal amount of capital you would like to raise, but also calculate the minimal amount of capital you actually need to break escrow. There is some minimal level of funding that will get you to the next stage of growth; so, determine what it is in the event you do not land where you hope from a fundraising perspective.

ORGANIZATIONAL DOCUMENTS

Banks and investors expect your organizational documents to be thorough, complete, and in order. Regardless of whether you are a corporation or a limited liability company, make sure you have well thought out and artfully drafted organizational documents. At a minimum, your organizational documents should address the following: management and governance issues, voting, the different characteristics of the different classes of equity, the equity structure, how additional equity will be raised, subsequent capital contributions, distributions and dividends, tax and accounting matters, transfers of equity, intellectual property issues, equity holder representations, and dissolution.

FEDERAL, STATE, AND LOCAL LICENSES AND PERMITS

Make sure your company has all relevant federal, state, and local operational licenses and permits and that each is valid and in full force and effect. Improper licenses and permits or licenses and permits that have lapsed present significant operational risks that banks and investors want to avoid.

INTELLECTUAL PROPERTY ASSIGNMENTS

Make sure your company can connect all of the dots in the chain of title for its intellectual property. All founders, employees, and other consultants touching or adding value to your intellectual property should execute an assignment of rights agreement with your company in order to mitigate the likelihood a former founder, employee, or consultant comes forward and claims ownership. You must have clean agreements that transfer a founder's, employee’s, or consultant’s work product to the company, barring them from claiming ownership in the work.

INTELLECTUAL PROPERTY STRATEGY

You must develop an intellectual property strategy. It will elevate your profile with banks and investors and increase your likelihood of being funded. Before you begin to invest in product and brand development, you will need to do some comprehensive searches for prior art and senior marks. No one wants to fund an infringement lawsuit.

EMPLOYMENT MATTERS

If you have hired or engaged anyone, make sure to have all the appropriate employment documents and practices in place, including employment agreements, offer letters, confidentiality agreements, and intellectual property assignment agreements. You should also make sure to register with applicable state employment divisions and make sure that people are properly classified as either employees or independent contractors.

BE UNBELIEVABLY ORGANIZED

Banks and investors want to review a tremendous amount of information about your company when performing due diligence, so get unbelievably organized and keep records of everything. Being highly organized will make the financing process more efficient and will save you significant time and money.

CONCLUDING THOUGHTS

Everyone's money is green, but it is not all the same. Seek out banks and investors that provide your company additional value outside of simply being able to cut a check.

It will be very difficult for any bank or investor to take you seriously if you are using self-help legal documents. Generally, the lowest cost product is false economy and ends up costing you more in the long run.

Do not expect a third party to commit considerable financial resources to your company if you have not committed the financial resources necessary to address all of the foregoing.