

Legal Foundations: Capitalization, Equity, and Structuring Your Startup

Boulder Startup Week 2026

7 Decisions that Compound Before Your Seed Round

LOI vs. Term Sheet — The Short Answer

A **Letter of Intent (“LOI”)** is a generally non-binding high-level memorialization that someone wants to do a deal - common in M&A and investments. A **Term Sheet** is a more detailed outline of the actual terms: price, timing, valuation, management, board, vesting.

Capitalization Starts on Day One. **Not** at Your Seed Round.

Most founders treat the cap table as something to figure out when investors show up. But by then, the equity split is set, the SAFEs are signed, the vesting is (or isn't) in place, and you're negotiating from whatever position those earlier choices left you in. Every decision made is leverage you either keep or give away.

7 Decisions That Calcify

1. **The 50/50 co-founder split.** Looks fair on day one and after all, you're best buddies. But, it becomes a deadlock when one founder leaves, underperforms, or the company needs a tiebreaker. The leak: no mechanism to resolve disputes, no path to recover equity from a departing co-founder.
2. **Vesting (or the lack of it).** Most early cap table problems trace back to vesting that was never set up, set up without a cliff, or never triggered properly. The leak: a co-founder leaves at month six holding half the company.
3. **SAFEs signed without modeling dilution.** One SAFE is easy. Five SAFEs at five different valuation caps with five different discount rates is a math problem that surprises founders at the priced round. The leak: founders own 10–20% less than they thought by Series A.
4. **Entity choice — LLC vs. C-corp vs. S-corp.** The right answer depends on your investors, your tax situation, and your exit path. Defaulting to an LLC because it's easy, or a C-corp because someone said you had to, both create avoidable problems. The leak: later conversions while doable, can be expensive, taxable, and sometimes structurally messy.
5. **Delaware-by-default thinking.** Delaware is the right answer often, not always. Franchise tax, filing requirements, and in-state vs. out-of-state implications matter more than conventional wisdom suggests. The leak: incorporated in Delaware, operating in Colorado, paying for both without the benefits of either.
6. **Employee equity - Real & Phantom.** Actual equity (stock, options, LLC units) is real ownership while phantom equity is a contractual promise to pay cash tied to company value at a future event — no ownership, *but taxed as ordinary income at payout*. The leak: ex-employees holding paper you can't cleanly recover from, hidden liabilities at sale, tax surprises, and a cap table that makes investors nervous.
7. **Founder IP assignment.** If founders built the early product before incorporating — or while still at another job — the IP may not actually belong to the new company. The leak: investor diligence flags it, and fixing it retroactively requires the cooperation of every person involved.

Cheap to Fix now. Expensive later.

Decision	Cost to fix pre-seed	Cost to fix Later
Vesting with a cliff	A signature	Re-papering with investor consent, Lawsuit
SAFE dilution modeling	A spreadsheet	The dilution already happened, Lawsuit
Entity / state of incorporation	A filing fee	Conversion costs and tax events, Lawsuit
Founder IP assignment	A one-page agreement	Tracking down contributors, Lawsuit
Co-founder split adjustments	A conversation	Lawsuit

The 5-Question Self-audit

If you answer “no” or “I’m not sure” to two or more, it’s worth a conversation before your next raise.

1. Do all founders have written vesting agreements with cliff and acceleration provisions?
2. Has all founder and early-contractor IP been formally assigned to the company in writing?
3. Have you modeled the dilution from every outstanding SAFE through a priced Series A?
4. Is your entity choice and state of incorporation aligned with where you’re raising and where you’re operating?
5. Does your employee equity plan have clear vesting, defined exercise windows, favorable buyout?

Before the Term Sheet

Some early-stage decisions are hard. All are hard to undo. If any of these questions gave you pause, that’s the conversation worth having before the next term sheet lands.



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