THE TOP TEN LEGAL TIPS

Every Small Business Owner Should Know.

ser & associates

The DO'S and DON'TS to minimize your legal risk,

so you can focus on what is important...
growing your business.

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Being a business owner is a 24/7, 365-day labor of love. It is hard work, but very rewarding. So why part ways with your hard earned income by spending it on costly mistakes? Mistakes such as a legal battle with a vendor that could have been avoided with a properly written contract. A claim by an employee for unpaid wages because you didn't know the law. Or the loss of use of your company's name or logo because it was not trademarked.

At Ser & Associates, our focus is always to mitigate legal risk, get the deal done and achieve an equitable resolution or outcome—allowing you to move forward with the important things – taking care of your customers, growing your company and achieving your business goals.

1. DON'T put your personal assets at risk.

It is very important that your business is operated through a business entity, such as a corporation or limited liability company, and not in your name. It is also important to maintain separate bank accounts for your business and your personal expenses, and to not use business funds to pay for personal expenses. These simple steps will allow you to protect your personal assets from lawsuits and creditors of the business. You then must ensure that the business entity is run properly to ensure its own identity so that your personal assets cannot be reached through an action to Pierce the Corporate Veil. How do you do all of this? By properly documenting the creation of the entity and preparing an operating or a shareholder agreement, in the case of multiple owners, to clearly identify the roles, ownership, and responsibilities of the company and its officers.

2. DO put your agreements in writing.

Not having a written contract can expose your business to a number of unnecessary problems such as ineffective operations and costly litigation. Even if you make an agreement verbally, confirm it in writing. A written contract prevents future disagreements over core terms such as pricing and performance. A written contract also functions as organizational memory providing clear and concise direction for new employees and supervisors. A common mistake business owners make is where they go into business with one or more individuals and then do not properly document the relationship through a shareholder or operating agreement, which controls all the important aspects of the relationship between owners, including, how decisions for the business are made, how the business will distribute profits, and how and to whom the business can be sold. Whatever the situation, memorializing agreements in writing saves time, increases efficiency and saves your hard-earned money.

3. DO protect your intellectual property.

Protecting your company's intellectual property is very important to its success. Every business has intellectual property. Every business uses a trademark, whether it's the business name, its logo, or both. Although once you use your trademark in commerce you have legal rights to it, these rights are not as strong as the rights you would have if you were to register the mark. It is very difficult to separate out a business's brand from its trademark, and often it is your company's most important asset. Take the steps necessary to protect your valuable asset by registering your trademarks.

4. DO negotiate the terms of your commercial lease.

If you are the tenant, most likely your lease was written in landlord's favor. This does not mean that it cannot be negotiated to include reasonable terms that will ensure your company's stability (renewal options), growth (first right of refusal for future vacant space at your building or center), increased profits (exclusivity clause for your type of business preventing landlord from leasing the space next door to a similar or like business), decrease in profits (kick-out clause to allow you to get out of a long-term lease if you cannot reach a certain amount of gross sales). Like these examples there are many more effective leasing methods that will protect your company and help it grow.

5. DO your homework when buying commercial real estate.

If you are interested in buying commercial property to house your growing business, it's important to conduct a thorough investigation of the property's land use and zoning to confirm things such as making sure your business is permitted at that location, that you can meet the parking requirements, that there is sufficient water and sewer capacity to serve your business, what types of licenses will you need, and the list goes on. It is also very important to confirm that there are no outstanding code violations on the property and/or fines that sometimes can reach into the hundreds of thousands of dollars.

6. DO make sure to safeguard confidential information.

All businesses have confidential information, such as employee personal information (social security numbers) and other customer information (credit card numbers, health information, drivers license numbers, etc.). Loss of confidential information could require your company to report such loss to government agencies and failure to do so could subject your business to fines and other legal consequences. Make sure you have processes and policies in place detailing how your company will make sure that both electronic information and hard copy documents containing confidential information are protected. In addition, train your employees on the importance of keeping this information confidential.

7. DON'T fail to provide for the orderly transition of your business.

A "buy/sell agreement" between you and a prospective purchaser—a partner, another shareholder, an employee, or a family member—is usually, a must. With a proper buy/sell agreement, you can assure a market for your business and possibly fix the value of the business for estate tax purposes. Plus, you will avoid the probate of your business. The probate process is a messy, time consuming, and expensive process. Mix in the added complexity of a business where your Personal Representative will have to make a formal declaration, submit an appraisal and inventory of your business' assets, present a valuation of the entity itself, prove ownership interest, etc.... and now you have a prolonged process that will certainly go on for years! Setting up a Revocable Trust while you are alive and transferring the shares (or membership interests) to the Trust will avoid this whole ordeal.

8.

DO
know the alphabet when it comes to work/investment visas.

The perfect applicant for your long vacant position tells you that she just received her H1-B visa and can start working immediately. Do you hire her? Depends. Employment for H1-B visa holders cannot commence until October 1 of the same year the visa is issued. So how long do you have to wait for that perfect employee? … Are you a foreign business looking to do business in the U.S? Do you need an E-1, E-2 or will your future business qualify for an Employment Based Residency visa such as an EB-5, which requires an investment of $500,000 -$1,000,000 and the creation of at least 10 full-time jobs.

9.

DON'T
get sloppy with payroll.

You consulted with an attorney, chose the "right" type of entity for your business, and did all of the necessary paperwork to make sure your business's liabilities remain your business's liabilities—and not yours. When payroll comes due, you put your employees first. You pay their net salary; calculate their withholdings and your payroll tax liabilities. And then, instead of paying it to Uncle Sam, you use that money to pay other creditors with the intention of paying the taxes in the future. However, when you do that, all that you've done to protect your personal assets was for naught. Not only can the IRS file a lien against and levy your business's property, at the same time, it can also file a lien against and levy your personal property. When you "loan" that money to yourself to pay other creditors, you create a liability for both your business and you personally that is there to stay. Be smart and do things right.

10.

DON'T
wait until April 15 next year to pay your taxes.

Failure to plan ahead typically leads to an unwelcome surprise on April 15th. Not only are you expected to pay your entire prior year's tax liability by that date (even if you file for an extension to file your return), but you may also be liable for a penalty for failure to make quarterly estimated tax payments. Penalties for failure to pay the estimated tax payments and the remaining amount of the tax by April 15 can quickly increase your tax bill. Compounding that headache, around the time that large tax bill is due, so is the first quarter's estimated tax payment for the next year's tax liability! The business owner can quickly find herself never being able to "catch up". To avoid accumulating personal tax liabilities, from Day 1, start thinking of taxes prospectively. If you wait until April 15 of the next year to find out what you owe, you may easily find yourself under a pyramiding pile tax debt, penalties, and interest. If you think you are already paying too much in taxes, consider the fact that paying late or filing returns late can quickly increase your liability by over 50 percent!

Whatever legal challenges your business may face, we offer guidance and solutions for setting up your business and relationships the right way from the start. We then provide you the business and legal assistance to overcome day-to-day challenges as they arise.

To learn more about how we can help, call us today at 305.222.7282 and let's talk about your business and your business matters.

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