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Common Legal Mistakes Made by Small Businesses

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Small business owners often fall prey to legal pitfalls that could potentially expose the company or themselves to unforeseen liability, costing their business significant sums of money. The greatest legal mistake a small business owner can make is not hiring an experienced attorney who will provide timely guidance as the business grows. Below are some other common legal mistakes businesses may encounter and suggestions on how to deal with them:

Failing to Keep Accurate Records such as resolutions of director and shareholder meetings, or a list of equity ownership can result in significant consequences if the owner intends on selling or merging the business. Also, if a business owner co-mingles business assets with personal assets, they are not failing proper corporate formailities. A creditor could sue the owners personally for not following proper corporate formalities. If a court were to agree, the owners may lose the limited liability protection of a corporation and become personally liable for the company's debts and liabilities.

Failing to Deal with Employees Properly could impose significant liability on the company. For example, the company could be held liable for the acts of its employees or if it is aware of an unsafe work atmosphere, which could impose significant fines on the company from the Equal Employment Opportunity Commission. To help mitigate potential problems, a company should have an employee handbook, workplace safety rules and hiring and termination practices that have been reviewed by their attorney.

Ignorance of the law is not a defense to any action. By ignoring environmental laws, zoning laws, tax laws or other laws applicable to your business, the State and Federal government can find the officers and owners guilty of violations whether or not they knew they were in violation. These violations may make the company subject to monetary liability. Companies should review issues within their specific industry and situations with an attorney to learn what laws are applicable to their business.

Choosing the Wrong Business Entity can be detrimental to a business. Many business owners feel that they should automatically incorporate their business. However, based on their goals, the direction of the company and other important factors, this may not be the best decision. An experienced attorney will guide owners through the various business entities to make the proper choice that will save them time and money. Features to look for in an entity are limited personal liability, amount of record keeping and future financial needs.

Not Having Good Written Agreements may make enforcing contracts difficult. Oral contracts may be enforceable, but they are hard to prove since the terms are not in writing, which results in a he said/she said debate. Well written contracts alleviate any ambiguity in the contracting process and confusion in the performance. An attorney review should help you understand the terms, liabilities and expectations of your contracts. Form contracts have their benefits, but an attorney should review them to insure they contain terms specific to your business needs and goals.

Not Documenting Succession Plans could negatively impact the transition of the day-to-day management of the company in the event of retirement, death or disability of an owner. Furthermore, succession planning also deals with the disposition of equity to third parties during the relationship. Companies may place restrictions on the sale of equity by owners by using a shareholders' agreement or buy-sell provisions in an operating agreement. Without such restrictions and if an owner transfers his/her equity interest in the company, the remaining owners may become stuck with an owner with whom they are not compatible. Also, in the event of death, an owner may become partners with a deceased owner's spouse, which could be catastrophic to the business.

Failing to Protect Intellectual Property such as software programs, logos, domain names, etc. which may be the most important assets of the company is another common mistake. Intellectual property can be protected through copyrights, patents, trademarks and trade secret protection. In addition to filing the various intellectual property applications, you can protect your intellectual property by having employees and consultants execute confidentiality and invention assignment agreements which protect material created by employees and consultants as works made for hire.

In conclusion, these are only a few of the legal pitfalls that a business may encounter; however, the better an owner is equipped at recognizing the legal issues that may arise, the better prepared one is to prevent and manage them. The best way to manage legal pitfalls and mitigate any damages is to retain a qualified, experienced corporate attorney.

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