Socius

Business Law & Estate Planning

BUSINESS LEGAL AUDIT CHECKLIST

PRESERVE, PROTECT AND GROW YOUR BUSINESS!

This Business Legal Audit Checklist is intended to help your business evaluate its legal health. It includes a series of questions about your business structure, enterprise operations, contracts (employment, vendor and customer) and other topics designed at identifying common issues that may impact your business. Although this audit checklist will likely identify some of your company's biggest liabilities, it cannot address *all* legal issues associated with your business. You are encouraged to contact your attorney prior to taking any action that will legally impact you and your business.

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CORPORATE LIMITED LIABILITY COMPANY ISSUES

1. Have you organized your business as either a corporation or a limited liability company to protect your personal assets from your business's creditors?

   ☐ Corporation ☐ Limited Liability Company ☐ None

2. If you are operating as a corporation, did you initially determine whether you should be an S Corporation or a C Corporation?

   ☐ S Corporation ☐ C Corporation

3. If you incorporated more than one year ago, have you annually reassessed whether you should be an S Corporation or a Corporation?

   ☐ Yes ☐ No

4. If you are incorporated, do you perform the following tasks in order to protect your corporate status?
   a. Hold shareholder and board of director meetings at least annually and prepare minutes for these meetings? ☐ Yes ☐ No
      If yes, when was the last time this meeting was held?_____
   b. Retain corporate reports in your corporate books?
      ☐ Yes ☐ No
   c. Keep your corporate and personal bank accounts separate?
      ☐ Yes ☐ No
   d. Sign corporate documents in a corporate capacity?
      ☐ Yes ☐ No

5. If your business is owned by more than one individual, do you have a shareholder (buy-sell) agreement or a limited liability company operating agreement that addresses the following points:
   a. That shares of your company's stock or an interest in your limited liability company cannot be conveyed to a third party without first offering the other existing owner(s) the opportunity to acquire the shares or the limited liability company interest?
      ☐ Yes ☐ No
   b. What will occur upon the death of an owner?
      ☐ Yes ☐ No
   c. What will occur upon the disability of an owner?
      ☐ Yes ☐ No
   d. What will occur upon the bankruptcy or divorce of an owner?
      ☐ Yes ☐ No
   e. What will occur upon the termination of employment of an owner?
      ☐ Yes ☐ No
   f. What will occur if there is a disagreement among the owners?
      ☐ Yes ☐ No

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6. Buy-sell Agreements and Insurance:
   a. If you have a buy-sell agreement, is it funded by insurance?
      ☐ Yes ☐ No
   b. If so, are the premiums current?
      ☐ Yes ☐ No
      What is the amount of insurance?_____
   c. Is it appropriate for the size and profitability of your business?
      ☐ Yes ☐ No

SALES DOCUMENTATION

1. Do you ever extend credit in the sale of your products or services?
   ☐ Yes ☐ No
2. If so, do you require that your customers/clients sign a contract or credit application that includes the following provisions:
   a. If payments are not made on time, interest will accrue on the unpaid balance at a specified rate of interest (typically 18% or 24% per year).
      ☐ Yes ☐ No
   b. If you take your customer/client to court or arbitration and win, you will be entitled to recover your attorney's fees and court costs from your customer/client.
      ☐ Yes ☐ No
   c. If you sue your customer/client, you may do so in the courts of the county in which you have your office.
      ☐ Yes ☐ No
   d. Any disputes that arise with your customer/client will be submitted to mediation and/or binding arbitration.
      ☐ Yes ☐ No
   e. Appropriate limitation of liability provisions limiting your company's liability to your customer/client.
      ☐ Yes ☐ No
   f. Appropriate waiver of warranty provisions waiving certain warranties which may otherwise exist.
      ☐ Yes ☐ No
   g. A personal guarantee by the individual owner(s) of your customer/client.
      ☐ Yes ☐ No

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COLLECTING ACCOUNTS RECEIVABLE

1. Do you send out invoices for your goods and/or services promptly after you have delivered your goods and/or provided your services?

   ☐ Yes ☐ No

2. Do you send out follow-up invoices regularly?

   ☐ Yes ☐ No

3. Do you regularly follow-up on unpaid/delinquent invoices with demand letters or telephone calls?

   ☐ Yes ☐ No

4. If your follow-up demand letters and telephone calls have not prompted payment, do you refer the matter to a lawyer or a collection agency?

   ☐ Yes ☐ No

5. Are you knowledgeable about small claims court, county court, district court, mediation and arbitration?

   ☐ Yes ☐ No

EMPLOYEE MATTERS

1. Do you comply with the applicable requirements regarding classifying individuals as employees or independent contractors?

   ☐ Yes ☐ No

2. Do you use independent contractors? ☐ Yes ☐ No
   a. If so, do you comply with IRS guidelines regarding their status as independent contractors?

      ☐ Yes ☐ No

3. Do you comply with the requirements of federal and state laws which prohibit discrimination on the basis of race, religion, national origin, age, sex (including prohibiting sexual harassment) pregnancy and disability?

   ☐ Yes ☐ No

4. Do you understand how to prevent wrongful termination lawsuits?

   ☐ Yes ☐ No

5. Are the questions that you ask job applicants in your employment application and in interviews legally permissible under applicable federal and state laws?

   ☐ Yes ☐ No

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6. Do you regularly document decisions made regarding employees in order to be able to support these decisions should they be challenged on the basis of discrimination?

   ☐ Yes ☐ No

7. Do you have an employee handbook, and if so, has it been reviewed by an attorney to determine whether it is appropriate?

   ☐ Yes ☐ No

8. Do you comply with the applicable laws concerning compensating employees for overtime?

   ☐ Yes ☐ No

9. Do you comply with the federal requirements regarding documenting the citizenship of your employees?

   ☐ Yes ☐ No

10. Do you comply with the Family and Medical Leave Act?

    ☐ Yes ☐ No

11. Do you have your key employees sign employment agreements, legally enforceable non-competition agreements, and/or non-solicitation agreements relating to the solicitation of your customers and/or employees? ☐ Yes ☐ No

PROTECTING BUSINESS IDEAS

1. Do you have your employees and sub-contractors sign non-disclosure agreements relating to the non-disclosure of your confidential information?

   ☐ Yes ☐ No

2. Do you take steps to maintain the confidentiality of your trade secrets?

   ☐ Yes ☐ No

3. Have you obtained trademarks and/or service marks to protect the names and logos of your business and your products and services under applicable state and federal laws?

   ☐ Yes ☐ No

4. Have you obtained copyrights to protect your important written materials and software?

   ☐ Yes ☐ No

5. Have you obtained patents to protect your inventions, business processes and software?

   ☐ Yes ☐ No

6. Do you utilize work-for-hire agreements and other such agreements that state that any ideas and inventions developed by employees or independent contractors working for your company are the property of your company?

   ☐ Yes ☐ No

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INTERNET ISSUES

1. Have you determined whether your internet domain name(s) infringe on another company's trademarks or service marks?

   ☐ Yes ☐ No

2. Have you obtained all applicable consents for content on your website?

   ☐ Yes ☐ No

3. Have you obtained all applicable consents for website links or framing?

   ☐ Yes ☐ No

4. Do you have a suitable Privacy Policy and Terms of Use on your website?

   ☐ Yes ☐ No

LEASES

1. Are you planning to lease space?

   ☐ Yes ☐ No

   a. If so, have you hired a lawyer to review and negotiate the terms of your Lease to make it more favorable for you?

      ☐ Yes ☐ No

   b. Do you have the following provisions in your Lease(s)?

      Renewal options ☐ Yes ☐ No

      Rights of refusal on adjacent space ☐ Yes ☐ No

      Caps on tenant repair obligations ☐ Yes ☐ No

2. Have you reviewed your Lease to determine whether you and your landlord are complying with it?

   ☐ Yes ☐ No

3. Does your Lease have an option provision, and if so, do you know the date by which you have to exercise the option or otherwise lose the right to do so?

   ☐ Yes ☐ No

4. Have you scheduled your Lease ending date with advance reminders?

   ☐ Yes ☐ No

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MISCELLANEOUS

1. Do you maintain photographs and/or video of all your business assets so that you have proper evidence if your property is ever destroyed by a disaster?

   ☐ Yes ☐ No

2. Please list any other issues of importance regarding your business?

   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____

By completing this Business Legal Audit Checklist, you likely have identified some of your company's most significant liabilities.

Preserve, Protect and Grow Your Business!

Contact us today.

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