

# **Business Law for Business Owners**

(aka “Why the Heck do I need a Business Attorney?”)

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# Topics to Be Covered Today

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- Some Common Mistakes Business Owners Make Which an Attorney Can Help Them Avoid
- The Benefit of Good Legal Advice
- Enlisting Your Attorney to Create Your Team of Advisors

# Common Mistake #1:

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Operating Your Business Without a Liability  
Limiting Entity



# Why Do You Want to Form an Entity?

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- Operating through a liability limiting entity shields your personal assets from your business liabilities
- Caveat: once you form the entity, you must adhere to “corporate formalities” (written actions, no commingling funds, etc.)
- Improper operation of otherwise validly formed entity leads to attempts to “pierce the corporate veil”



# Entity Formation

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- Subchapter S Corporation (“S Corp”)
  - Must make an election with the IRS
  - Restrictions on who can own shares of an S Corp
  - All shareholders have the same rights
  - Possible SE Tax Minimization



# Entity Formation, Pt. 2

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- Limited Liability Company (LLC)
  - Flexible structure
  - Ability to vary allocation of governance rights and financial rights
  - Single member LLC “disregarded” for federal income tax purposes; sole proprietorship income
  - Drawback: full SE tax (FICA applies to all income whether salary or profits)



# S Corp vs. LLC

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- FICA Tax Minimization – S Corp
- Flexibility – LLC
- BUT: DON'T WORRY: Minnesota's corporation and LLC statutes provide for a mechanism to convert an LLC to a corporation and a corporation to an LLC



# Standard Documents

## S Corporation

- Articles of Incorporation
- Bylaws
- Initial Written Actions of Shareholders/Directors
- Shareholder Control Agreement (w/ Buy-Sell Provisions)
- Form SS-4
- Form 2553 (S Election)

## LLC

- Articles of Organization
- Operating Agreement/Bylaws
- Initial Written Actions of Members/Governors
- Member Control Agreement (w/ Buy-Sell Provisions)
- Form SS-4





## Top Mistakes Made in Entity Formation that an Attorney Can Help You Avoid

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- ❑ Use of state-provided Articles of Incorporation or Articles of Organization (you miss the default provisions!)
- ❑ Incomplete Documents (no Bylaws or Control Agreement with Buy-Sell Provisions)
- ❑ Failure to timely file S Election

# Common Mistake #2:

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Entering into verbal or “handshake” agreements without a written contract



# Getting it in Writing: When the Law Requires...the “Statute of Frauds”

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- ❑ Certain contracts are required by law to be in writing to be enforceable (the law is called the Statute of Frauds)
- ❑ Contracts involving the sale of real estate
- ❑ contracts concerning the sale of goods worth more than \$500
- ❑ contracts that cannot be performed within one year
- ❑ contracts to pay off someone else's debts
- ❑ leases for more than one year
- ❑ contracts concerning a marriage



# Getting it in Writing: the non-legal reasons

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- Using written contracts makes good business sense
- Written contracts make it clear what parties' obligations are
- Written contract can specify what remedies are available if one party breaches the contract
- **EXAMPLE: recovery of attorney fees**

# Common Mistake #3:

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Drafting a contract yourself and/or not having your business attorney review the contract



# Getting it in Writing is Not Enough; there is still room for error

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- Contracts signed in the owner's personal name instead of company name
- Ambiguous contract terms
- Lack of adequate remedies (attorney fees, injunction, alternative dispute resolution)



# Your Business Attorney is More than Just a Scrivener, Part One

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- Your business attorney should be a “trusted advisor”
- You might see a situation in your business only once, whereas your attorney might have seen it before, and maybe even multiple times
- The attorney as auto mechanic: does your attorney fix what you ask him/her to fix or does he/she recommend preventative maintenance and/or find other issues?



## Your Business Attorney is More Than Just a Scrivener, Part Two: Your Attorney's Role in Building Your Advisory Team

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- Use your attorney as a resource; we know people!
- The essential advisors to any business:
  - Business attorney
  - Estate planning attorney (can be the same person as the business attorney)
  - CPA
  - Financial Advisor
  - Banker
  - Insurance Agent
  - If the business has employees: HR and Payroll






- ❑ Established in February 2007
- ❑ Comprehensive Program Designed to Provide Essential Legal and Non-Legal Services to New and Emerging Businesses in their Formative Years
- ❑ Combines cost effective basic legal services, referrals to “strategic partners” and periodic education/networking programs
- ❑ Objective is to encourage new business owners to utilize professional advisors, including attorneys
- ❑ We attempt to replicate our existing clients’ successes with new businesses


All business ideas start from the same place...



...some succeed...



...and others do not...



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# Thoughts to Remember From Today...

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- You are an expert in what you do (i.e., your business)
- Do not try to be an expert in areas where there are other experts to assist you (legal, accounting, insurance, payroll, human resources, etc.)
- Hiring other experts for these areas will **save you money** in the long run!!



# Questions?

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