Business Law for Business Owners

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

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Topics to Be Covered Today

- 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:

Operating Your Business Without a Liability Limiting Entity

Why Do You Want to Form an Entity?

- 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

- □ 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

- □ 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

- □ 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
- OperatingAgreement/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

- □ 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:

Entering into verbal or "handshake" agreements without a written contract

Getting it in Writing: When the Law Requires...the "Statute of Frauds"

- □ 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

- □ 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:

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

- □ 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

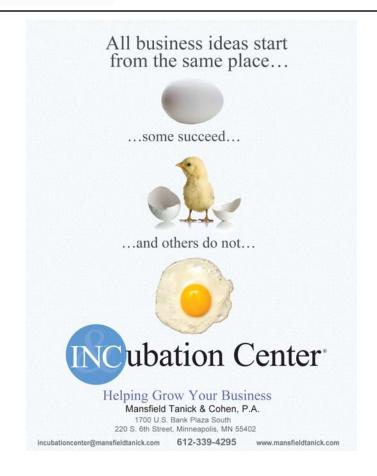
- ☐ Your business attorney should be a "trusted advisor"
- You might see a situation in your business only once, whereas your attorney might have seen it before, and maybe even multiple times
- The attorney as auto mechanic: does your attorney fix what you ask him/her to fix or does he/she recommend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

- □ Use your attorney as a resource; we know people!
- □ The essential advisors to <u>any</u> 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



Thoughts to Remember From Today...

- ☐ You are an expert in what you do (i.e., your business)
- □ Do not try to be in 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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