



What if I Get Sued

When you are in business today, you must realize that there is a whole subculture that exists purely to sue business

owners. Most business owners have done very little to protect their personal assets in the case of a business lawsuit. Having your business in an entity such as an LLC or corporation does provide some personal liability protection to the owner but even that is limited. If, in court, it can be proven that the owner of the business is responsible for the event that led to the liability, the entity no longer protects the owner. In most closely held businesses, it is not difficult to show that the owner was responsible.

If action is taken against the company, the owner could have virtually no protection for his personal assets. Most business owners have a large percentage of their net worth in their businesses. If a creditor goes after the company and is successful in doing so, the owner could personally be wiped out.

The first and easiest step to take is multiple entities. An example would be to have the company owned by one entity, the building by another and, even, the trucks owned by another. This way, if one of the company's trucks should injure somebody, the only entity that could be sued would be

the entity that owns the trucks. The only assets that this entity owns are the trucks. I liken this concept to "multiple firewalls."

There are other issues that need to be addressed. Business owners need to protect their companies from employees leaving and taking confidential information and/or trade secrets with them.

Employees should be asked to sign a Non-compete Covenant.

This could prevent the employee from going to a competitor or going into business and competing against their former employer. The law of the enforceability of this covenant varies from state to state and a lawyer needs to be consulted.

Employees should also be asked to sign a Confidentiality Agreement. This prevents the employee from divulging any information that was shared with them at their place of employment. If this agreement is violated, there could be dire financial consequences for the employee.

We also suggest employment contracts for the key employees. This agreement puts in writing the rights enjoyed by the employer and the employee. If this agreement is properly drafted by an attorney, it could save a lot of heartache in the future.

Every business should have a written Employee Handbook. This handbook should discuss in great detail complaint procedures in the case of harassment of an employee. It also should discuss everything from drug testing to e-mail and voicemail procedures. It should clearly spell out how, why, where and when. This handbook should also include how company property, such as computers and vehicles, need to be treated. The business owner should have their attorney review the handbook before it is distributed to the employees.

Whenever possible, we suggest that the business owner remove personal guarantees and not use personal assets as collateral unless absolutely necessary. If nothing else, try to negotiate with creditors on this matter.

Increasingly, we see the use of limited liability companies and limited partnerships. These are very popular with family owned businesses. It is somewhat difficult for a creditor to foreclose on an LLC or LP (again seek legal counsel in this matter). We have often seen parents contribute assets to a limited partnership to protect those for their children in case a creditor should go after the parent.

As I have often said in the past, this is working on the business versus working in the business. Business owners spend far too much time working in instead of on their businesses. This article discusses the kind of things business owners must focus on in order to prevent a potential disaster in the future. As always, we do not practice law so talk to a competent attorney. ■■■

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