

The Legal Checklist for Small Business Success

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Simplicity LAW

In our experience working with small businesses, legal matters can have a powerful influence on your success.

By using the law to your advantage and avoiding common legal mistakes, your small business is much more likely to succeed. Simplicity Law has put together this simple checklist of the most common areas where you can make the law work for you and avoid common mistakes many businesses make.

Protection Against Liability. It is important to separate and protect your personal assets from the liabilities of your business.

- Are you using a limited liability entity such as a corporation or LLC to protect your personal assets?
- As your company grows, are you using multiple limited liability entities to protect your business assets?
- Do you avoid using personal checking accounts and avoid signing or guaranteeing company documents, such as contracts and letters, in your personal name?
- Do you protect your personal assets by separating them from the primary owner or operator of the business?
- Are your corporate records and registrations current?
- Are directors and officers protected from liability and indemnified?

Straightforward Ownership. The most common and serious legal issue affecting many small businesses is that it is unclear who owns the business. Facebook is the latest well-known example of a business that had to go back and deal with multiple, and unclear, claims of ownership from people providing financing and business ideas. Make sure you understand your ownership rights from the beginning.

- Are rights in ownership clear to protect against multiple ownership claims in your business?
- Are rights relating to voting, selling stock, dividends clearly spelled out?
- Does your business comply with securities laws when selling stock and other investments in the business?

Rights To Name And Other Intellectual Property. Many small businesses, in a rush to get started, use a name and start building value in it only to find that someone else can make them stop using it. Or, small businesses often do not act quickly enough to protect their names when others start using it. Others lose the value of their business plans and trade secrets by not having the right agreements and arrangements in place.

- Do you have the rights to your company's name?
- Are there any similar or confusing names that are used outside your business?
- Have you protected your name against unauthorized use by others?
- Are your trade secrets protected?

Effective Tax Strategies. Planning for taxes is one of the most important things separating successful small businesses from those that don't make it.

- Have you adopted strategies to reduce your unemployment taxes by separating wage compensation from payments to owners?
- Are you managing your start-up expenses in a way that maximizes their tax value?
- Are you structured to best avoid the risk of being audited?
- Are you structured to avoid (or, in some cases, take advantage of) double taxation?

Excellent Employee Relations. The most likely lawsuit your small business will face will come from one of your employees. Are you doing things properly to avoid this risk in your small business?

- Have you collected appropriate information from your employees to ensure their legal status?
- Do you have an employment handbook with policies to protect and guide you and your employees?
- Have you filed the required forms for unemployment, worker's compensation and payroll withholding?
- Do you have policies in place to avoid discriminatory employment practices in hiring, firing and employing people?
- Have you posted all required workplace notices?
- Are you properly classifying workers as either independent contractors or employees?
- Do you have employment agreements that protect your status as an at-will employer?
- Do you have well-drafted non-competition and employee confidentiality agreements?

Smart Leases. Leases create long-term obligations, which can present challenges for small businesses faced with uncertainty about future growth and organizational change. It is important to think ahead before signing any lease.

- Are your office leases flexible?
- Do you have the right space for your needs?
- Do you clearly understand your lease costs?
- Have you provided for ways to get out of long-term leases if circumstances change?

Clear Contracts. Small businesses often ignore contracts because they take too much time to read and negotiate. When small businesses sign contracts, especially with bigger companies, sometimes they fail to make sure they understand exactly what they are signing. Both of these things can lead to disastrous results.

- Are your company's important agreements set forth in carefully drafted written contracts?
- Do you have a system for keeping track of important obligations and notice requirements under your contracts and agreements?
- Have you structured your contracts to minimize personal and business exposure to liability?
- Can the average person understand what is meant by your contractual obligations?
- Do your company's agreements contain protection from liability for defective products and services?
- Are you careful in your promises (covenants) in agreements to make sure you're able to meet them under a variety of circumstances?
- Do you have protection in your default clauses so you have time to fix before it is too late?

Litigation Prevention. When small businesses go to court, they usually lose. Even when they might win a judgment, the costs and time lost results in a big loss for the small business. Take advantage of the many ways to reduce the risk of litigation.

- Do your commercial contracts require parties to resolve disputes with cost-effective arbitration provisions?
- Do your agreements limit the other party's right to sue you?
- Do you make use of cost-effective and time-effective small claims court proceedings where possible?

Compliance With Laws And Regulations. There are so many laws, permits, licenses, and regulations that it is easy to try to ignore them. Have a professional on your side who can help you keep up with and use these laws and regulations to your advantage.

- Does your company undergo periodic legal checkups to ensure compliance with the latest laws and regulations?
- Do you have current permits for all your business operations?
- Do you know what your company's environmental obligations are?
- Is your advertising truthful and not deceptive?
- Are your relations with competitors and others in compliance with antitrust obligations?
- As you expand into new states, are you properly registering your business?

Operating Properly Over The Internet. Most small businesses are using the Internet. Laws for operating your business over the Internet are changing frequently. Make sure you are up-to-date and protected.

- Is your website content protected?
- Is your use of third party content allowed?
- Is your domain name protected?

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