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Making legal matters easy and economical for your business

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Reduce Personal Liability from your Business

Here is a quick outline to help you avoid personal liability from your business. You'll see that most of my advice derives from an informed use of corporations and corporate law, which is why...

First, form a corporation or LLC for your business. In most cases, you should *not* run your business in your own name as a sole proprietor (or as a partnership). You should hide behind a corporation or LLC, and take the limited liability that comes with those entities.

Don't put personal assets in your corporation; observe formalities. If you have a corporation or LLC, do not put personal assets in the entity. This increases the likelihood that a creditor will pierce the entity and get to you. Personal assets belong in trusts; business assets belong in corporations or LLCs. Also, hold regular board & shareholder meetings, make your annual filings and pay your franchise taxes.

Be careful with contracts. *First*, read everything you sign, because your company will be responsible for it later on. *Second*, when you sign a contract, make sure you sign on behalf of your company and not in your own name. Make sure your signature line clearly states the name of your company and your title with the company. This makes clear the capacity in which you sign so that no one can later argue that you signed personally. *Third*, in your contracts where applicable, try to have provisions that cap your damages at specific dollar amounts, and that exclude certain types of damages (e.g. consequential).

Avoid personal guarantees. Don't sign personal guaranties. When you sign a guaranty, you become personally liable for your company's debt. This ruins your safe exit from the business. True, some transactions require a guaranty, for example, bank loans. That said, you can negotiate away the guaranty in most other transactions, including leases and supplier contracts. If nothing else, put up a good fight against the guaranty.

Always pay the government. The government writes the laws for its own benefit, not yours. Specifically, the law can hold officers in a company personally responsible for the company's taxes notwithstanding the corporate shield. The worst examples of this are --

- **Payroll and other withholding taxes.** If you're a control person in a company, be sure it is paying its payroll taxes to the IRS and CA EDD. The IRS and CA EDD go after a company's control persons (e.g. CEO or CFO) personally to collect unpaid payroll taxes. The control person keeps the liability for life until paid – you cannot discharge the liability in bankruptcy.

Word to the wise: Don't get smart and convert your employees to contractors to avoid payroll taxes. If you misclassify your employees as contractors, the government will still treat them as employees and assess you for the payroll taxes you should've paid. This debt extends to all missed payroll taxes during the term of misclassification, perhaps years. That's a big bill. Read my newsletter from last month for more information.

- **CA sales tax.** California holds control persons liable for a company's unpaid sales and use taxes. This liability attaches at dissolution, termination or abandonment of a corporation. Again, be sure your company pays its sales taxes.

Buy insurance. Lastly, there is no substitute for liability and professional insurance. If you get sued, your insurance company pays to defend the case and pays the ultimate settlement. Your premiums are a small price to pay for this peace of mind. Please do not be cheap when buying insurance. Get a good broker, and be happy to pay a higher premium for a reputable insurance company that actually pays its claims.

And there you have it. Call me if you want to talk more.

Manners

- Manners are a sensitive awareness of the feelings of others. If you have that awareness, you have good manners, no matter what fork you use. – *Emily Post*
- Good manners will open doors that the best education cannot. – *Clarence Thomas*
- Manners are of more importance than law. . . . The law touches us but here and there and now and then. Manners are what vex or soothe, corrupt or purify, exalt or debase, barbarize or refine us, by a constant, steady, uniform and insensible operation like that of the air we breathe in. – *Edmund Burke*
- Manner is personality—the outward manifestation of one's innate character and attitude toward life. – *Emily Post*



"Just even it out."