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January 3, 2019

Happy New Year:

Whether 2019 was a good year or a bad year on the business side, you made it to 2020. We, at Stanfield & Dupre are glad we could be a part of your growth and/or continued success as a business owner. Consider this your annual legal checkup letter where we discuss and highlight common areas that small business owners either overlook and/or that we just recommend you look at each other on the legal side and finally how we see our role as business attorney.

1. Having The Right Business Structure

Selecting the right entity type (LLC, LP, Inc., LLP etc.) is crucial from an asset protection standpoint. LLCs and LPs provide the best asset protection in Texas and LLCs are by and large the preferred entity for most operating businesses. An LP or LLC is beneficial for estate planning purposes. For most clients, we do NOT recommend owning or operating as an Inc. unless they are doing business overseas or are going public in the near future. Corporate stock (unlike ownership interest in an LP or LLC) is not as well protected in Texas, i.e. it is subject to seizure by a creditor. It is simple to correct that problem, but often delayed or overlooked due to the perceived hassle of conversion. Please let us know if you have any questions on your structure or just need a refresher on how you are set up.

2. Not Having Terms And Conditions Policies To Which Customers Agree To Be Bound

When you access company websites, especially those that provide services of some sort, you will generally see a "Terms and Conditions" agreement. In this agreement, are all of the specifics for use of your products or services and customer obligations in that use. If you do not have this policy in writing and published and a "check box" for a customer to select before a purchase, then you have left yourself wide open to a inclusion in a lawsuit if that customer becomes a defendant.

If you do not have an interactive website that would require or necessitate online terms and conditions, such should be listed in your standard contracts or on the back of a purchase order at the very last.

We review and update terms and conditions on a weekly if not daily basis. Make sure your forms are up to date!

3. Failure To Have a Privacy Policy

Any business that markets its products online must have a privacy policy that explains what customer information it does and does not share. For example, if you share your customer list and emails with another company, your customers have the legal right to know. Further, that privacy policy must be publicly disseminated. Just like your terms and conditions, make sure your privacy policy is up to date.

4. Failure To Follow Business Tax Laws

Is your business subject to sales or franchise ? When must you file your business income tax returns? Do you need to make quarterly payments? Tax law is complicated no matter where our business is located. Make sure you have a good accountant or great software that keeps your records and timely files your taxes.

5. Inappropriate/Incomplete Contracts With Outside Vendors

When you use the services or purchase raw materials from someone outside of our business, you need iron-clad contracts. When you are either an owner or a tenant of your premises, you need legal documents that establish the “rules” for occupancy. Never enter into an agreement with an “outsider” without a legally-binding agreement. A good attorney can draft those contract templates for you – don’t rely on free Internet sites.

6. Failure To Get The Proper Documentation On Employees

Federal laws require that you have copies of certain documents on file for every employee. It is easy to overlook or just get behind on documentation especially during the day to day hustle and bustle of running a business. Have your accountant or attorney review those records on a quarterly/annual basis and get a good, consistent system in place for hiring and firing.

7. Failure To Get Nondisclosure And Non-Compete Agreements

You have proprietary information that belongs to your company – customer lists or special “formulas,” for example. Anyone who works for you and who has access to this valuable information must be legally bound by these agreements. Take Kentucky Fried Chicken as an example. The recipe is a highly-guarded secret. Anyone with access to this recipe must sign a non-disclosure agreement which legally binds them never to reveal that recipe. The same goes for customer/client lists or setting up a competing business. Insurance companies, for example, usually make their employed agents sign a non-compete which prevents them from leaving and stealing clients.

8. Not Getting Copyrights, Patents, And Trademarks

You will have no leg to stand on if another party “steals” you name, copies your product or intellectual property verbatim, unless you have protected these things. There is a difference in laws regarding physical products, code, and ideas, and you need to know which protection to use for each thing. Technology companies are particularly vulnerable today. Know the law and protect your stuff.” - Jeremy Litster, CEO of Litster Frost.

With the above in mind, this next section, while a little self serving, addresses a question we often hear in the world of LegalZoom and online contracts - how exactly can a business lawyer help my business and/or when should I call my attorney?

A lawyer can help set up your corporate structure, protect your intellectual property, deal with real estate, insurance, and tax issues, defend you in the event of lawsuits or other liability, and even provide exit strategy and estate planning advice.

Many businesses often turn to a lawyer only when it's too late. The best time to find a lawyer is before you need a lawyer; not only will the attorney be familiar with your business, but he or she may be able to help you avoid problems before they occur. If you run a small business and don't feel consulting with a lawyer is necessary, keep in mind the fees you are charged for services that help you avoid legal problems will be far lower than the fees you are charged then you are faced with a legal problem. When should you consider seeking legal advice? There are just a few situations where getting the help of an attorney can make sense:

(a) **Establishing a legal business entity**

Online or do-it-yourself incorporation saves money, but the process is sometimes more complicated than it may first appear. An attorney can not only help you file the appropriate documents, but he or she can also help you determine which type of corporate structure is best for your needs and type of business. Also, choice of entity discussion could be the most important decision you make around formation.

(b) **Corporate Governance**

While most corporations will use an attorney to help with the process of incorporation, new businesses sometimes neglect the on-going legal requirements to maintain their corporation status. Annual shareholder, director and partner meetings need to be held, and recording of minutes and election of officers must conform with state requirements. Failure to do so could jeopardize corporate status and result in "piercing of the corporate veil" in the event of a lawsuit or other legal action, exposing corporate officers to personal liability or other legal problems.

(c) **Insurance Advice**

Premises liability, professional liability, error & omissions; all worthy of a conversation with an attorney to ensure your enterprise is protected in the event of an accident or mistake.

(d) **Intellectual Property**

Many intangible assets of a business should be legally protected. A company's name, logo, brand name may be entitled to trademark protection. Proprietary computer software, semiconductor chip mask designs, vessel hull design and many other creations may be eligible for patent registration. Patents are often thought to cover only machines and other manufactured products, but can also protect processes, such as a method for refining petroleum, or new compositions of matter, such as chemical compounds or mixtures. Trademark, copyright and patent registrations can help a business protect the things that give it a competitive advantage in the marketplace

(e) **Hiring employees**

Employee lawsuits and disputes most commonly occur because an employer did not properly define the employment relationship. Problems are not limited to issues like pay policies, overtime policies, and benefits programs. Many businesses fail to protect intellectual property and customer relationships. Solid non-disclosure agreements and confidentiality agreements can protect you from losing control over intellectual property and from watching your ex-employees become your direct competitors.

(f) **Firing employees**

Hopefully you will never be forced to fire an employee, but if you are, ensuring that you do so in a legal and defensible manner can help you avoid litigation.

(g) **Creating and signing contracts**

Agreements, leases, and other contract are binding once signed; the contracts you sign should not commit you to one-sided terms that place you at a disadvantage. And the contracts you create should protect your company and serve in its best interests.

(h) **Resolving disputes**

An attorney can help resolve external disputes, like with vendors, suppliers, or customers. An attorney can also help resolve internal disputes between partners, shareholders, and even employees.

(i) **Purchasing other companies**

Buying another business can create a number of business, legal, and tax considerations. An attorney can structure the agreement properly, negotiate terms, and help look for potential risks and liabilities created by the purchase. And, depending on the nature of the industry and the business, an attorney can help you understand and meet regulatory guidelines.

(j) **Bringing in and removing partners or shareholders**

When a company issues stock, notes, and other corporate securities, the process is governed by state and federal laws. Violating those laws could create liability for company owners and executives. Partnership agreements should specifically detail the rights and responsibilities of all parties to avoid misunderstandings.

(k) **Succession planning**

Small companies rely heavily on every employee, especially the founders and key executives. A succession plan can not only help the company survive the loss of a key employee, but also deal with the potential financial ramifications. A good succession plan identifies contingencies and establishes a plan for dealing with those situations. "What happens if someone leaves the company?" is a question that should be answered ahead of time.

(l) **Selling the business**

Selling a sole proprietorship can be relatively simple. Selling a corporation can create a number of tax and legal obstacles that must be overcome. In addition, the manner in which you sell the company (transferring stock, deferring payments, etc.) can dramatically affect your tax burden. A good attorney can guide you through the process of selling a business – and ensuring the sale is on terms that are as favorable as possible.

You will definitely need an attorney if:

- You face a serious legal problem. Examples include a customer who is injured by one of your products, a vendor who violates a contract, or if your business fails to comply with state regulatory requirements.
 - Employees sue or threaten to sue. If an employee sues for discrimination, wrongful termination, sexual harassment, or another issue, immediately seek the help of an attorney. Not only is your company liable, but in some cases you or your employees can be held personally liable as well.
 - You face an environmental or other regulatory issue. Violations of environmental protection laws carry heavy penalties; plus you may be liable for cleaning up any hazards or violations. Certain areas are heavily regulated; e.g., healthcare, FDA, if you are in the healthcare device space.
 - You are concerned about an issue ... but are not sure. The worst time to look for a lawyer is when it's too late; if you're unsure about an issue, about potential liability, or about whether you are in compliance with regulations or laws, ask an attorney for guidance. Legal advice is often like insurance: you pay a little up front in order to avoid major expenses later.
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We hope 2020 treats you well and always keep in mind that Stanfield & Dupre is here to help.

Regards,

A handwritten signature in cursive script that reads "Nick Dupre".

Nicholas A. Dupre

Brent Stanfield

