

Small Business TodaySM

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Building a Firm Foundation For Your Small Business

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In this edition of Small Business TodaySM, I decided to address a question I am often asked—that is, “Why do I need a lawyer for my small business?” Sometimes, the person asking me this question is concerned about paying too much for the advice they need. Sometimes, she believes she can do it herself, or someone she trusts has told her incorporation is not necessary. If you’ve ever thought this way, read on.

You’ve heard all of these stories before.

- ◆ Someone you know loses a personal lawsuit and is ordered to pay a judgment. A lawyer-friend had advised him that there was no point in forming a limited liability company because, as a personal service business, he would still be personally liable for damages. Now, in a panic, he transfers his personal and business assets to a distant family member in the hopes of appearing insolvent to the plaintiff. Although he somehow manages to avoid being accused of fraud, he loses anyway—when the family member refuses to transfer the assets back, and he and his family are left penniless.
- ◆ A sole proprietor’s accountant tells her that there is no advantage to forming a corporation until her business makes at least \$75,000 per year. As her customer base grows, she signs several contracts in furtherance of her business. A few years later, she incorporates to take advantage of certain tax benefits and to avoid personal liability. Her business fails, however, when the owner is disabled and can no longer run the company. She defaults on her agreements. Even though her business was incorporated at the time of default, the owner remains personally responsible for breaches of those original contracts. Liability for contract breaches can continue for as long as ten years in some states.
- ◆ Two friends form a “hand-shake” partnership and proceed to operate their business. One day, one of the partners takes out a loan on the partnership assets without permission of the other partner and keeps the money. When the time arrives to repay the loan, the partner who signed for the loan is insolvent. The bank forecloses on the partnership assets, which are liquidated at a judicial sale. But the assets are not enough to repay the entire debt, so the bank also seizes and sells the personal assets of both partners to pay the deficiency.

More than likely, you already suspect that lawyers are necessary to some extent in your business. After all, you are at least interested enough in the subject to read this. But you may ask, "Exactly when is the right time to involve a lawyer in your small business?" My answer is "now!"

Employing an attorney as counselor to your small business is like building a house on a solid foundation. While you can sometimes repair a faulty foundation, it is an expensive and time-consuming process that everyone wishes had been done right the first time.

People generally understand the importance of proper structural integrity in their homes. For example, you wouldn't dream of buying a prefabricated, "one size fits all" foundation. No, you want a foundation that will support something resembling the size and shape of the floor-plan you selected.

Nor would you hire the cheapest foundation contractor you can find. You want to be sure that the person you hire is experienced and knows how to do the job right.

And would you ask a roofer for advice on the best kind of foundation to have? I don't think so.

Even the most avid "do-it-yourselfers" shy away from the laying foundation of their home. It is just too important. After all, everything else you plan to build will rely on how well your foundation is formed!

Yet, it is surprising how many otherwise conscientious business owners make every one of these mistakes when it comes to constructing the "foundation" of their small business. This phenomenon is especially astonishing considering how many hundreds of thousands of dollars (or more) and countless hours you will spend setting up and running your business.

And like a bad foundation under a home, it may be years before you know whether the way you built your business will cause problems. Your business may be fine now, but when the "cracks" start to show, sadly, the situation may be just too bad to fix.

By now, you are beginning to see how the lack of the right foundation could stunt the growth of your business. You still may wonder, however, what exactly a lawyer can do to help. If so, you share the opinion of many others—that is, the

Did you know?

Your local economic development authority and small business development center have free resources and helpful staff that can fill you in on everything from business plans and loans to employee training incentives and other government assistance for your business.

Check out the [US Small Business Administration website](#), SBDC locator for an office near you (www.sba.gov/sbdc).

See also, the [US Department of Commerce, Economic Development Administration](#) for national and state information (www.eda.gov).

Finally, if you live in Lafayette Parish, Louisiana, be sure to visit this outstanding local resource: [Lafayette Economic Development Authority \(LEDA\)](#) (www.lafayette.org).

erroneous belief that lawyers are merely people you hire to defend you or sue somebody—not someone you should hire to help *build* your business or proactively protect your assets.

Like those people, you may not realize that attorneys are also *counselors*-at-law. We don't just fight for you, we *advise* you on how to avoid a fight or help limit how badly damaged you become if you ever end up in one. A good lawyer should be an integral part of your team of advisors—just like your accountant, realtor or insurance agent.

But some of you remain unconvinced, thinking "I can figure out all the answers I need on my own." While I would never tell anyone that it is impossible to go it alone, the difficult part isn't necessarily finding the answers—it's figuring out the right questions! And this goes not only for non-lawyers but also attorneys who don't routinely handle small business start-ups and asset protection planning.

Lawyers who work exclusively with small businesses have the knowledge and experience to know whether the "foundation" you *think* you need is really the *right one for you*. These attorneys also have the expertise to prepare a customized asset protection plan for your company that not only fits it now but gives it room to grow. Finally, these attorneys can help prevent your business liabilities from consuming your personal assets as well.

Before reading this, you may have understood why big companies use lawyers this way, but you might argue that small firms just don't need that kind of help until they reach a certain size. In response, I ask only: "How do you think big companies got so big?"

For more information on this subject, see these articles:

- ◆ ["7 Good Reasons to Call A Lawyer,"](#) Jeff Wuorio.
- ◆ ["Hiring a Lawyer: 5 Questions to Ask,"](#) Philipp Harper.
- ◆ ["Understanding How Lawyers Charge,"](#) Louisiana State Bar Association.

The people starting "big businesses" planned for success and recognized that proper legal counsel, right from the start, could help them reach their goals faster and more cost effectively than going it alone.

More than just drafting documents for a fee, the right lawyer can smooth out your road to success. The right lawyer will help you find resources that your business can really use. Finally, the right lawyer is a guide that will help alert you to common pitfalls that businesses face *before* they happen.

A small business attorney can help you prioritize and decide what legal services you need now and what you can put off until later. Such a lawyer can also be an indispensable source of the professional and business contacts you will need as your business grows. Ultimately, the right lawyer can *SAVE* you money.

Even if you are already in business and aren't sure what more you should do, the sooner you address the question, the better. After all, the longer you wait the more liability you may risk.

While it is not always easy to know what to do, or how and when to do it, the right lawyer can make all the difference. Take some time to explore the ways in which personalized service from an attentive, experienced small business counsel can help your venture prosper—now and in the future.

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