

WAYS TO MINIMIZE YOUR BUSINESSES' AND YOUR PERSONAL LIABILITY

We live in a litigious society. We see news stories about the latest lawsuit, and how a jury awarded a zillion dollars for something that appears minor. (Paging, the McDonald's My coffee is too hot award.) There are also social networking sites dedicated to spreading the word about frivolous law suits. (<https://www.facebook.com/ColoradoLawsuitAbuseWatch?>) Countless clients, after a suit is over shake their heads wondering why they had to go through it. While risk cannot be eliminated, there are a number of steps that should be taken to try to minimize a businesses' personal liability.

First, what kind of business are you in, and does the use of an entity (a corporation, a limited liability company, a limited partnership, etc) decrease your exposure? Generally an individual is not responsible for corporate (or other entity) debts or liabilities. But be careful: you are always responsible for your own actions. A quick example is seen in the construction industry. There, the builder (definitions vary) still owes his client a duty to build in a workman like manner, in spite of the fact the he has formed an entity to attempt to minimize liability. Forming an entity may allow you to take the first step to minimizing personal liability and keeping any debt and exposure at the entity level. Also, beware of forming the entity, by yourself. These are typically fine, if there are no other owners, but the agreements in the entities establish each of the owner's rights, duties and liabilities among them. This is why caution should be taken before resorting to online forms.

Second, get the appropriate insurance, and the right amount of insurance. Learn what kind of insurances are available, and equally important, learn what the real expectations you should have from those policies. It is also important to know what kinds of policies exist for your business. You should have this discussion with your insurance broker, others in your

business, and even your attorney. Remember, however that with every policy, there are exclusions, limitations, and exceptions.

Third, before signing any document, read it, understand it, and if it is something you are not familiar with, determine whether you should seek to have it reviewed. Countless clients ask for clarification about what a contract means after signing. Leases, promissory notes, personal guarantees, purchase orders, sales contracts, for example, can be difficult to understand, especially the first time that you are presented with one. Take the time to review the document, and understand what it means. Are there terms of art? Was it drafted to that is a fair document, or is it boiler plate? What obligations are you signing up for? Can terms be negotiated that help you or offer protection?

Fourth, do not be afraid to ask for advice. I recall a client coming to me after firing an employee, and asking what he should do about an employee issue. He had failed to have an employment agreement, an employee manual, and had failed to document the employee's continued transgressions. Unfortunately, this employee had sued a prior employer, and knew the system. My client was ultimately successful, but this was after the matter went to trial. Advice on how to discipline an employee, and to document employee's tardiness, etc would have made the dispute much easier to defend, or could even have prevented the ex-employee from bringing suit. You may also be surprised at how friendly your competitors are if you approach them, and ask for advice. There are several trade organizations where business owners often more than happy to help one another out.

Fifth, if you are going into business with a partner, put your agreement in writing. Spend the time to negotiate the deal points. Any attorney will tell you that putting together a company is much easier, than seeing one come apart. In the beginning, most agreements are amicable, as

everyone seems to want to complete the deal. When there is a dispute among owners, then you will have to live up to what you agreed to. What is the buy out process? What rights does a minority owner have? What can the majority owner do without the consent of all of the other owners? These are all issues that should be agreed to ahead of time and reduced to writing.

While it is not possible to eliminate the risk of running a business, there are steps to minimize it. Determine whether your business will benefit by using an entity. Talk with someone with experience about your insurance needs. Read, understand and turn to others to help you with the meaning of documents before you sign them. Talk with others when dealing with new situations. By following these steps, you may be able to avoid being the next headline or being in front of a jury of your peers.