

Have You Ever Had a Legal Audit on Your Business?

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(Editor's Note: Robert G. André is the WSNLA consulting attorney. He writes regular articles for B&B addressing legal matters of concern for nursery industry professionals.)

Most small business owners are familiar with accounting audits and tax audits, but few are familiar with legal audits. A legal audit is where you hire a lawyer to review your business operations to look for potential legal problems and help you avoid them. Starting the year off with a good legal audit will help your business operate more profitably, efficiently and with fewer legal risks.

Advantages of a Legal Audit

With the cost of litigation skyrocketing, many business owners are anxious to try to minimize their potential exposure to claims and lawsuits. In a legal audit, your lawyer will review with you your current business practices in order to insure that you are complying with the law and will make suggestions for dealing with potential legal problems before they occur.

A legal audit can be used to assess the general "legal health" of your business. It can also be tailored to very specific areas of concern, such as federal and state tax liabilities, employment law problems, and hazardous waste issues.

Contracts

Many small businesses use standard form contracts for bid proposals, orders and sales. A legal audit of your contract forms can help prevent customer disputes and cut down your risk of unpaid accounts, refunds and lawsuits. Your lawyer can identify and redraft ambiguous and inadequate language in your invoices or contracts and can explain to you the legal consequences of liquidated damages, warranties, disclaimers, allocation of risks and other contractual terms.

Some business owners still insist on conducting certain business transactions with oral agreements and handshakes. Your lawyer can advise you on what to say or not to say, and can tell you which types of agreements must, by law, be put in writing to be enforceable. A word of advice--try to get a down payment from a customer in any matter where the transaction involves substantial goods or services.

Business Structure

Many business owners are unaware of the potential advantages to be gained by reorganizing the legal structure of their business. For example, running your business as a corporation might be more advantageous for tax and liability purposes than continuing to operate as a sole proprietorship or partnership. Your lawyer can review your current business structure and advise you on what type of business entity would best fit your particular situation. Your lawyer should also explain to you about the pros and cons of new legal entities in Washington such as Limited Liability Companies (LLCs).

A legal audit can also be used as an opportunity to update your business records, registrations, and licenses. Your lawyer can also assist you in obtaining special business certifications such as minority and women's business enterprise certifications.

Taxes

A legal audit will usually include a review of your bookkeeping system, financial records and tax returns. Your lawyer will be looking for compliance with state and federal tax laws and for ways to decrease your tax liabilities. A legal audit can also include a review of your current employee benefits package (i.e., vacation and sick leave, pension plan, group life and health insurance, and disability policies) to insure that you are accomplishing your employee benefit goals while taking advantage of all available tax deductions.

Collections

In many cases a legal audit can help you improve your collections on unpaid accounts. For example, there are various statutory liens that you can put on a debtor's property without going to court. Your lawyer can also advise you on how to deal with customers who file for bankruptcy and how you can protect your rights as a creditor. In addition, you can get advice on how to find and use reputable collection agencies, how to file claims in small claims court, how to file and foreclose on liens, and how to enforce wage garnishments and judgments. Your lawyer should be able to explain to you, step by step, how to handle a small claims court action. This is particularly important given the fact that a third of the inquiries I receive from WSNLA members involve collection actions.

Unfair Business Practices

Any business which advertises in a newspaper, magazine or other publication faces potential liability for truth in advertising violations. Washington State has very strong consumer protection statutes which in some cases can impose treble damages and attorneys' fees on business owners who violate the law. Your lawyer can explain to you the fundamentals of truth in advertising laws, antitrust laws, and unfair business practices and consumer protection laws and how you can avoid legal problems in this area.

Your lawyer can also draft employment agreements and non-competition agreements for your key employees. These agreements can protect your business if a key employee decides to go to work for a competitor and tries to take away your customers.

Employee Relations

A legal audit can help in preventing personnel problems. Your lawyer can review and update your employee manuals and uncover and deal with potential employee problems in such areas as unfair labor practices, workers compensation claims, overtime and severance pay disputes, employment discrimination claims, and employee rights issues. Your lawyer can also review your job application forms and your hiring and firing procedures to insure that you are in compliance with the law and that you are not inviting potential employment discrimination and wrongful termination lawsuits. More lawsuits than ever are being filed today against businesses by the Equal Employment Opportunity Commission (EEOC) and under the Americans with Disabilities Act (ADR). Ask your lawyer how you can best prevent these potential lawsuits.

Insurance

A legal audit should include a review of your insurance situation, including your general liability coverage, umbrella coverage, and life, health and disability plans. Your lawyer will be looking for potential problems such as inadequate coverage limits, gaps in coverage, excessive deductibles, unfair policy exclusions, and poor claims handling practices. Your lawyer can help you to interpret the fine print contained in your insurance policies and can also assist you in filing negotiating, and defending claims.

Environmental Concerns

Environmental laws, rules and regulations are growing in number every year. Consequently, an environmental audit of your business can help minimize your potential liability exposure in this rapidly changing area of the law. For example, your lawyer can review your current waste disposal practices and determine what toxic substances are being used in your business in order to make sure that you are in compliance with all applicable environmental laws. Caveat: Never agree to buy or sell a piece of property that may be contaminated until you ask your lawyer about the risks that are imposed on both the buyer and the seller.

Financial Transactions

A legal audit can provide you with advice on security interests, mortgages, business loans and letters of credit. Your lawyer can also advise you on various financing arrangements and assist you in negotiating loans and maintaining a good credit rating. Your lawyer can also work with your accountant to update your annual financial statement.

Personal Matters

A legal audit is also an opportunity for you to review your current estate planning needs, including your wills, trusts, life insurance arrangements and retirement plans to insure that your needs, your family's needs and your business needs are being met. Your lawyer can update these documents and also explain the effects of community property laws on your business and help you protect the assets of your business in the event of a death or divorce. Finally, a legal audit can provide a convenient opportunity for you to get advice on other personal legal problems, ranging from child custody and support payments to real estate transactions and personal injury lawsuits.

Conclusion

A legal audit can take a few hours or a few days of your time and your lawyer's time. How much time is invested will depend on how many potential legal problems are uncovered in your business. For many small businesses, a legal audit can be completed in less than a day and at a cost of less than \$500. This will be time and money well spent because it will improve your business operations.

Good luck!

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