



10 Most Common Legal Mistakes Entrepreneurs Make

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What this presentation is not

- This presentation is not intended as legal advice. The legal issues attendant to the creation and operation of every business are unique and should be fully investigated by legal counsel to help position the business to succeed.

What this presentation is

- While every business has unique circumstances, there are a very consistent, repeated set of issues faced by entrepreneurs. I frequently advise entrepreneurs about these concerns. When an entrepreneur obtains no legal assistance on the topics discussed in this presentation, I often have to clean up an expensive mess.

Mistake Number 1: Choice of Entity

- There are many different entity types in Michigan. Which one is right in any given situation depends on numerous factors (liability protection, tax issues, ease of obtaining investor capital, etc).
- The key for entrepreneurs is to choose an entity that best suits their situation. Engaging in business activities without any liability shield is an uncompensated risk.

Mistake Number 2: Organizational Documents

- Organizational documents define how the entity will be managed. They are powerful tools to, among other things, avoid internal power struggles and, when followed, make it difficult for creditors to “pierce the corporate veil.”
- Organizational documents should be drafted to be consistent with the manner in which the entity will actually operate.
- These are not lists of aspirational goals – these set the rules of how the organization will be run.

Mistake Number 3: Recordkeeping Failures

- Types of records: Financial, Production, and Corporate Records.
- Financial records prevent trouble with the IRS and investors (if applicable).
- Production records prevent trouble with customers.
- Corporate records prevent trouble with lenders/creditors and piercing the veil arguments.

Mistake Number 4: Applicable Regulations

- Does the type of business you want to engage in require any permits or licenses? Is there any government oversight, including agency regulations, applicable to your business/product?
- Does the location at which you want to operate your business have any applicable zoning or private restrictions?

Mistake Number 5:

Contracts with Customers and Vendors

- Your contracts with customers should be clear regarding your obligations and the customer's obligations. You want customers to use your contract, so you know the terms, and any dispute can be settled locally for you.
- Your contracts with vendors (at least key vendors) should be vetted for unfair provisions. Always try to negotiate with vendors, including banks and landlords.

Mistake Number 6: Employees

- 1099 or W-2? Benefits?
- Numerous laws on discrimination.
- Your business should have procedures and policies in place, and should follow them.
- Do you need a non-disclosure and/or non-compete from an employee?
- Will an employee receive an ownership interest? If so, consider IRC Sec. 83(b) and 409A.

Mistake Number 7: Securities Laws

- When you transfer ownership interest in the business to anyone, securities laws can apply.
- You must comply with both Federal and state securities laws.
- The general rule is the ownership interest (“security”) must be registered to be transferred. There are many exceptions.
- The general penalty is rescission.

Mistake Number 8: Intellectual Property

- One initial concern for a business is whether it needs a license from another to use intellectual property (examples: names, software, logo, etc.).
- Also, if your business has original intellectual property, you may want to consider registration to obtain protection.

Mistake Number 9: The Exit

- You should begin with an end in mind. It can be a moving target during the life of a business.
- Consider what happens upon death or disability of the entrepreneur. What about the bankruptcy or divorce of a partner?
- Succession planning with a corpse often involves a judge.

Mistake Number 10: Procrastination

- Most issues described on this list can be handled fairly quickly and inexpensively when all parties are in agreement (and no third party is threatening suit).
- Attorneys have two types of business clients: those who pay less now for some planning, and those who pay a lot later for the clean up.

Questions?

- Thank you for your time.
- Please feel free to contact me:

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