

Articles

"Lawyers for a Small Business: Why You Need Them and How to Find Them"

David Griffith

Houston Business Journal

March 29, 2004

Business is interacting with people to make money and through which the owner has or soon expects to have assets that they do not want to lose. A small business is one that does not have an in-house legal department. A small business needs, therefore, to find lawyers.

Why You Need Lawyers Now

Smart patients do not wait until they get sick before seeking medical advice. They do not rely on magazines articles on illnesses because, though helpful, magazines cannot find the disease, inoculate, or treat. Rather, doctors are needed, especially when the patient has been exposed to disease, not merely suffering from it. Small businesses need lawyers before being sued in the same way. Making a living exposes the business to legal problems. Reading such publications as this is useful, but it merely makes the business the equivalent of an informed patient, not a doctor.

- **Draft a Business "Prenuptial" Agreement**

If fellow owners are involved, then the business needs a prenuptial agreement. True prenuptial agreements have the stigma of transforming romance into business. Not having the business equivalent of a prenuptial agreement does not transform business into romance, just heartache. A plan for a business divorce is needed precisely when the divorce is not needed. Partners or fellow shareholders need to agree on what happens when the other dies or if there is some other parting of the ways. Generally, the plan needs to provide some buy-out mechanism, which requires a determination as to how the buy-out will be calculated in advance. A good lawyer can also identify and address in this agreement a host of other contingencies that will make any business "divorce" less painful when it happens.

Do not assume that, as the "controlling" owner, a lawyer is not necessary. Just the opposite is true. Majority owners can owe fiduciary duties to minority owners. (If someone owes a fiduciary duty, they must put their interests above their own. For instance, lawyers owe a fiduciary duty to clients.)

- **Protect Intellectual Property.**

Businesses run on ideas and names. Owners need to try to make sure that theirs will not be taken and that they do not inadvertently take someone else's. Few areas of the law are as challenging as that pertaining to intellectual property. Patent, trademark, and copyright laws silently govern much of what occurs in business. The Internet has only added to its influence. A good intellectual property lawyer can help register trademarks, which includes names, logos, and other distinctive characteristics, and patent any inventions. Also, they should be used to help determine how to avoid violating someone else's trademark rights or infringing on someone else's patent.

- **Document Deals**

A business may need to buy or lease real property. Certainly businesses need to buy and sell goods or services. Do not rely on the forms drafted to benefit the other guy. Get a good real estate and transaction lawyer.

- **Deal with Employees**

If hiring employees is part of the plan, a good labor lawyer can provide valuable advice. . Non-compete and non-disclosure agreements may be necessary.. A lawyer may also be needed if the business owner is firing employees. It could help avoid a discrimination lawsuit or from the employee making other trouble.

Articles

- [The Solution](#)

Small businesses are not supposed to hire a half dozen lawyers. Instead, find a firm who can handle the needed and anticipated matters. . Then use (and, therefore, pay) them only when needed.

How to Find Lawyers

Finding a law firm is much like finding a good auto repair shop. Ask around. Visit. Better yet, take a small matter to the law firm and ask for their help. If it is small, it will not cost much, and it needs to be done anyway. Establish the relationship. Sometimes, just like the good auto repair shop, the client might later receive free advice. If the client is satisfied, the business has someone it can call with confidence when a future problem arises. If a new matter involves another area of the law, the first lawyer can refer the client to another lawyer at the firm.

The best way to find a lawyer is a referral from someone whose judgment is trusted. If the best way does not work, a lawyer listing reference can be a start. Martindale-Hubbell, a widely used reference in the legal profession, offers one at http://lawyers.martindale.com/xp/Martindale/Lawyer_Locator/Search_Lawyer_Locator/firm_search.xml. Determine the business' needs and identify the kind of law firm that would best serve those issues. Consider the law firm's office locations in relation to where business is conducted or to the city in which the business has its principal office. Once those steps are taken and a list is defined, search the law firm's website and determine if they offer the areas of practice that would be of benefit to the business. A small business owner will want a full service firm. While a variety of legal talents may not be needed now, they may later.