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“Tip of the Month”

Maintaining the Company Shield

Many business owners form limited liability companies (LLC’s) or corporations to protect their personal assets from liability. Business owners do not want their homes and personal bank accounts to be at risk for big claims against the business.

Forming an LLC or corporation creates a shield against this kind of liability exposure, sometimes called the “corporate veil.” Bill collectors or lawsuit claimants sometimes attempt to “pierce the veil” or break through the shield to get at the personal assets of the company’s owner. Here’s how to avoid this:

- **Maintain the Company Record.** If your company is a corporation, keep minutes of annual and special stockholder meetings. If it is an LLC, be sure to have an LLC operating agreement. Every year before April, file your company’s Annual Report with the Secretary of State. If you are not sure you have done this, check on your company’s “good standing” at www.sos.nh.gov/corporations.
- **Avoid Illegal Misconduct.** Fraud can be a reason to break through the shield. Some statutes will also impose personal liability, such as for not paying your employees’ payroll taxes, or not having workers comp insurance.
- **Notify the World.** You must have LLC or Corp. or Inc. after the company name on your stationery, business cards, contracts, and invoices. Otherwise, claimants might argue that you were hiding your company’s limited liability status.
- **Sign in Your Representative Capacity.** Do not sign company contracts or commitments personally as an individual. To indicate you are representing a limited entity, put your title after your signature, such as President or Manager or Member or CEO.
- **Do Not Co-Mingle Funds.** Be sure your company has its own bank accounts and books. As a matter of sound fiscal policy, company owners often pay themselves salary, with bonuses when possible. To help maintain the shield, the smart company owner does not use the company account as a personal piggy bank.
- **Capitalization.** Claimants will occasionally argue that if a company is too thinly capitalized, the liability shield is invalid. If from the outset the company has never had enough cash to pay its bills, they argue that the company should not be protected by the shield.

New Hampshire courts have a strong tradition of upholding the entity shield against personal liability, but company owners do not want to tempt fate. Following the few simple steps outlined above helps avoid trouble before it starts.

If you need any help keeping your company’s records on track, please give us a call at 603-669-1971 or by email at mailbox@biz-patlaw.com.

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