

# Business Audits Allow Business As Usual



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Preventive law is a prime component of our business law philosophy. As with doctors who prescribe preventive steps to avoid illness, we counsel our business clients to insure compliance with corporate formalities and to adopt and follow sound business practices designed to avoid unnecessary legal issues and that minimize both the cost and likelihood of expensive legal problems.

Many businesses achieve this goal through the companion devices of a periodic, low-cost legal audit, and through a check list of common legal pitfalls, many of which are easily addressed but may cause significant headaches if they are ignored. Among these issues are the compliance with the basic corporate formalities and the maintenance of certain optional corporate documents that provide templates for the resolution of unanticipated problems.

**Annual Corporate Documents.** Failure to observe the corporate formalities – including conducting and memorializing annual meetings and recording the process by which key decisions are made – may lead to questions of validity and can threaten the status of the entity. Various types of annual minutes can be produced with little difficulty when they are maintained as a matter of course. Likewise, other director, shareholder or member decisions should be properly memorialized. An audit can identify recent transactions subject to recordation and provide a tickler system to minimize the chance that meetings are missed or not memorialized in the future.

**Buy-Sell Agreements.** When times are good, the need to plan for a bleak or rainy day may seem superfluous. However it is easier to objectively decide how the business will be transferred and acquired in difficult straits if it is addressed when the sun is shining. Restrictions on the sale of stock membership to outsiders and provisions governing buy-out on the death of an owner allow the corporation to maintain control of its fate. It also eases the burden in case of the death or disability of an owner.

**Push-Shove or Dispute Resolution.** Similarly, a dispute resolution provision, whether contained in the By-laws or Operating Agreement, or in a stand-alone document, permits owners to identify and resolve substantive disputes in accordance with a pre-established protocol, lessening the chance that a difficult dispute leads to stalemate.

**Registered Agent.** Every business entity recognized by the State Corporation Commission must, as a condition of good standing, maintain a Registered Agent. Under Virginia law, the RA must be either a resident of Virginia and an officer or director of the entity, or a law firm or lawyer. The office of the RA may be best understood as the designated recipient of formal notices, including notifications from the SCC, and service of law suits directed against the business. The RA is required to maintain is or her current business address with the SCC, and legal notice may be considered effective absent actual notice if an address change is not registered. The

effect of an RA leaving the business, or a business relocating without notifying the SCC can be devastating. An audit will determine whether you are in compliance with statutory obligations related to maintaining an RA.

**Non-Competition Agreements.** Particularly in service businesses where employees have personal contact with clients and customers, failing to consider the techniques necessary to prevent the employee from stealing the client may be extremely costly. All states limit the extent to which an employer may limit his employee=s future employment opportunities, but it is a rare circumstance in which the legitimate business interests of the entity cannot be addressed through a well-crafted agreement limiting or preventing improper competition. An audit can determine whether your employees are or should be subject to proper employment restriction, and the ways in which this issue can be addressed.

**Trade Secrets.** A corollary to non-competition issues, Trade Secret protections are designed to prevent the rogue employee from making off with and profiting by the business techniques developed by the employer. Trade Secrets are subject to broad enforcement, but enforcement is predicated upon compliance with certain preconditions related to the internal protection of the secret, and the means and manner by which the employee is placed upon notice that a particular item constitutes a Trade Secret. An audit can determine whether your business practices include Trade Secrets, and, if so, whether they are properly protected.

**Intellectual Property.** Many companies do not have intellectual property subject to protection; others do and either don=t realize it, or don=t understand the means of protecting it and the potential cost of failing to do so. Because of the state and federal structures involved, and the registration costs charged by both bodies, it can be expensive to protect trade names, slogans, designs, or business techniques in this manner. However businesses ought to make the decision based upon the sort of cost-benefit analysis that an audit can make.

**Policies and Procedures.** The cost implied by the size of the typical policies and procedures manual can be off-putting, but both the similarities and differences in business needs can combine to reduce the costs below expectations. Standardization of policies regarding such day to day formalities as vacation and sick leave and details of job performance can enhance productivity and minimize trivial disputes. The establishment of policies designed to insure compliance with Wage and Hour and other federal guidelines, and to address various discrimination concerns can increase the likelihood of compliance while providing a first line of defense in the case of alleged violation.

Every corporation should consider the legal needs arising from these and other regular and re-occurring issues. Not only are our attorneys experienced in producing the above-described documents, I offer my regular clients audits – at reduced rates – to identify the holes in the corporate structure and their particular business needs, thereby increasing the ability of the company to tend to business without major distraction.