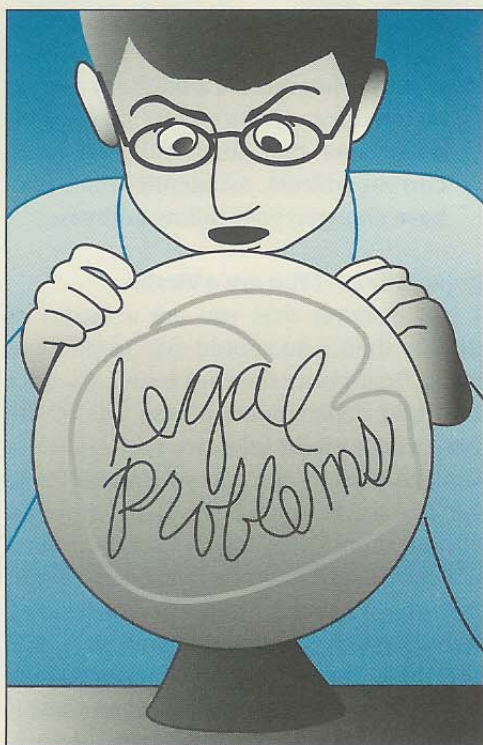


Taking Care of Your Business's Legal Needs



Lois Ratzloff

As a business owner, you're probably always on the lookout for ways you can save money and minimize risk. One of the best ways to do both of these things is to anticipate legal problems and cut them off before they become a big deal.

From time to time, ask your lawyer to do a review of the legal side of the business. This kind of legal audit can uncover omissions that could be troublesome, such as the absence of corporate minutes. It can point out changes you need to make in documents as a result of new laws and regulations. And it can provide you with the opportunity to discuss potential problems and be better able to deal with them, at an early stage when they can be resolved efficiently and cost effectively.

Some companies do a legal audit a month or so before the end of the company's taxable year. This enables the audit to include year-end tax planning issues. You can often save substantially on taxes by either completing a transaction in the current tax year or deferring the transaction until the next taxable year.

Many businesses have the audit done a month or so before the company's annual meeting and use the audit as a planning vehicle for action that needs to be approved at the annual meeting.

Here are just some of the issues you can review in your legal audit:

- basic constituent documents, such as the articles of incorporation, bylaws

and stock transfer records of a corporation, the articles of organization and operating agreement of a limited liability company or the partnership agreement of a partnership. Reviewing these periodically can disclose issues that need to be addressed because of changing circumstances or laws. It might even be advisable to change from one kind of business (a partnership, let's say) to another (a corporation);

- employment agreements;
- all leases, licensing agreements and other contracts with third parties, with particular emphasis on termination dates, renewal options and the like;
- insurance policies;
- all standardized contract forms used by the business, for example, purchase order forms, warranties, brochures and the like;
- internal policy and procedural manuals, for example, an employee policy and procedure manual, or an

antitrust compliance handbook;

- transactions that require additional documentation, such as official minutes;
- regulatory compliance—for example, assumed or trade name filings, environmental regulations, ERISA problems, Securities and Exchange Commission requirements;
- structural changes in the business organization—for example, conversion to another business form, adoption of a retirement plan or a fringe benefit plan;
- filing of annual reports with the Secretary of State and other regulatory bodies;
- tax planning issues, for example, S Corporation status, legal audit, alternative minimum tax review;
- filing of tax returns, licenses and reports;
- pending and potential litigation involving the company; and
- recent legal developments affecting the business.

When the "Legal" Light Flashes

Besides your periodic legal audit, you're well advised to be sensitive to problems that might have a legal dimension. Make it a practice to call your lawyer when certain kinds of issues come up, set out the facts, and ask for guidance. Most of the time, at the cost of a few minutes of your lawyer's time, you'll learn it's either nothing to worry about or something you can deal with by taking a few precautions. If it is a problem, you'll be able to work with your lawyer to solve it before it becomes bigger.

Here's a list of major actions/transactions where you should at least strongly consider getting legal help.

- Assessing and negotiating franchise agreements;
- Creating standardized forms such as purchase orders and contract confirmations that the company will use in the business;
- Buying or selling a business;
- Negotiating loan terms;
- Negotiating leases of land or equipment;
- Buying or selling property;
- Negotiating agreements to license others to use patents, trademarks or other intellectual property rights that you own, or negotiating to obtain a license to use rights from someone else;
- Negotiating other types of contracts;
- Responding to a lawsuit that's been filed or one that is seriously threatened (responses might involve negotiating with the other side, coming up with a legal strategy, filing appropriate

motions in response to the other side's motions, conducting pretrial steps, etc.);

- Filing a lawsuit on behalf of the business;
- Dealing with the government over a serious issue (e.g., something important involving how the business is regulated);
- Dealing with tax authorities over a serious issue;
- Seeking new investors (raises issues under securities laws);
- Opening offices or beginning to do business in other states or countries;
- Devising strategies for dealing with a business in trouble (bankruptcy and other options);
- Making provisions to pass along your business interests to family members, minimize taxes upon death (estate planning).