

*"One can have no smaller or greater mastery than mastery of oneself." Leonardo da Vinci*

Welcome to our **Expressing TOSCA** section – a forum for artists and authors to promote their work. We hope you will honor these people with your appreciation. Call them or email them if you like their work. Consider what they have to offer if you are in the market for a book or for some art. And if you are an artist or an author remember to **PROTECT** your work. In the article below attorney James Wahl tells you how to do that.

### **"See Further" When Facing New Business Legal Matters**

By James A. Wahl\*

Starting a new business is demanding. A variety of challenges – sales, marketing, setting up an office, staffing, etc. – take priority. It may be tempting for the entrepreneur to push legal concerns aside in favor of focusing time and energy on tasks that are essential to getting the business off the ground. However, there are many areas where legal planning can save time and money in both the short and the long run. One of our objectives as a firm is to "see further" – to help business owners create a legal structure that will maximize the value of their investment of capital and effort.

#### **Corporate Structure**

Proper legal entity selection and organization can, among other things, limit the legal liability of the owners, facilitate tax savings, streamline accounting, and facilitate eventual sale of the company, whether to insiders or third parties. Starting as a sole proprietorship has the advantage of simplicity, but does not allow for expansion or bringing on investors. Organizing a limited liability company or corporation at the outset can provide the business with structure and flexibility to take advantage of growth opportunities.

#### **Trademarks and Other Intellectual Property**

It is unfortunately common to hear of businesses that have failed for lack of protecting intangible assets. Acceptance of a corporate name or "dba" by

your Secretary of State does not protect against trademark infringement claims. Name availability should be evaluated not just on a local or State level, but national as well. Failure to do so can result in receipt of a trademark infringement notice where the options are fighting a costly legal battle or trashing advertising and marketing materials, usually developed at the cost of thousands of dollars, to adopt a new name. When contracting with web developers, software programmers, marketing consultants and others who create "content" for the business, it is essential to have written agreements transferring all copyright ownership to the business owner. Absent written copyright assignments, independent contractors maintain valuable copyright interests and can prevent the business owner from fully utilizing properties it mistakenly thinks it owns.

#### **Non-Disclosure and Non-Compete Agreements; Customer Contracts**

If your company has employees, their knowledge is probably one of your most important assets. Conversely, their ability to use that knowledge to your detriment may be your undoing. Properly drafted confidentiality and non-compete agreements can provide necessary protection against competition, without unfairly restricting employees. Many businesses rely on customer / client agreements and carry accounts receivable while projects are completed. Properly worded, signed agreements will frequently make the difference between a collectable account and a write-off. Legal review of employee and customer agreements will generally pay for itself if even one dispute is avoided.

#### **Exit Planning**

Most entrepreneurs hope to exit the business in some manner – whether through sale of the company, sale of their equity, or transition of ownership to family members or key employees.

Proper planning and structure at the outset is essential to maximize value. For example, a business with more than one equity owner should have a buy-sell agreement to address purchase options and valuation questions in the event of exit by one of the owners. Structuring in the corporate flexibility to issue equity interests to key employees, family members or outside investors can provide a means to transition responsibility for running the business to others when the founder wishes to retire or pursue other interests. And, having proper corporate records will facilitate due diligence by an outside buyer in the event of a sale of the business.

While it's tempting to defer dealing with legal matters when starting a business, attention to essential legal issues will generally pay for itself. Failure to properly address legal matters early will usually lead to expensive disputes and difficulties down the road.



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