



Avoiding Litigation

Avoiding litigation takes planning, for all business owners, regardless of the size of the business. And while some business owners consider the expense of hiring of an attorney to provide counsel and write, review and/or update documents as unnecessary, strategic planning with your attorney helps avoid problems and brings benefits and strength to your business.

Of the various activities conducted by any business, the most common sources of litigation are dissatisfied customers and dissatisfied employees, and, for small- and mid-size businesses, disputes between owners. Each of these sources often lead to contentious litigation, and are generally extremely costly once in litigation. Of course, litigation comes from many other sources, such as someone slipping on your business premises, or a dispute with your landlord or tenant.

In order to limit the likelihood of incurring the high cost of litigation, in money and time, certain preventative steps should be taken, always.

First and foremost is ensuring every-

First and foremost, avoiding litigation requires that everything be in writing.

thing is in writing. Whether you are dealing with a contract with a customer or an employee, no verbal agreements should ever be made. In your non-working life, surely you can recall dozens of examples where you and someone else (a spouse, sibling, friend) have very different recollections of what was said on a particular issue. In your personal life, this often simply results, hopefully, in a brief argument. In business, this can result in expensive, drawn-out litigation.

Whenever you are discussing the terms of a contract or business deal, or the hiring or promotion of an employee, verbal modifications may seem perfectly natural, particularly regarding

what, at the time, seems to be a minor issue, such as extending payment terms by several days. What you must always remember is that litigation often arises years after the event in question – long after recollection has faded.

Another advantage to requiring every term to be in writing is that you avoid the unscrupulous client or employee. If everything is in writing, and the writing contains a clause requiring all terms to be contained in that writing (an integration clause), you avoid the

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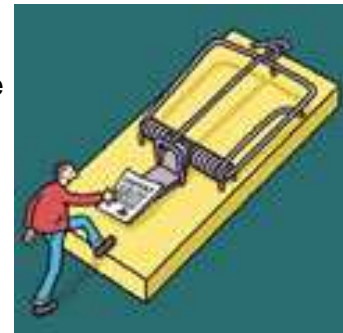
claims by an employee, for example, that you had promised a particular bonus, or time off. Or the customer who claims you had agreed to absorb the increase in materials costs.

The importance of all of your business dealings being in writing can't be overstated. Nor can we overstate the importance of having those documents periodically reviewed by your attorney to ensure the documents protect your rights, limit your exposure, and meet your business requirements and changes in the law, or the law of the particular state the contract will be performed.

You may have been using the same "standard contract" for years, without litigation, and perhaps even without controversy. The fact that you've played in traffic all these years without getting hit doesn't mean you won't. Having a regular, periodic review by your attorney of your contracts, employment agreements, employee policies and procedures, and real estate documents is like the insurance policies you buy for business interruption, or for your fleet of

vehicles and your computers—they ensure that if the unexpected happens, you are well protected. Such reviews help decrease the likelihood of litigation and other problems, and in fact may increase profitability, by securing such benefits as better payment terms, a favorable shifting of risk, or a more favorable lease.

The need for a writing establishing *all* of the parameters for the agreement between business partners can't be overstated. These partnerships often grow out of friendships, or family, and common visions and goals. In the exciting of a new business venture and partnership, trust is rarely an issue. However, when the business blossoms, or flounders, trust and friendship may become secondary concerns to ensuring your own financial future. Your financial future should not be governed by what



About the firm

Goldblum, Sablowsky and Zemel, LLC specializes in business, succession, tax and estate planning and administration for individuals and business-owners; federal, state and local tax disputes, real estate transactions and litigation. We serve as general corporate counsel to small and mid-size companies in all market segments in Pennsylvania, West Virginia and Ohio. Typically, our clients view us as strategic partners, providing a wealth of financial, tax and business planning.

Philip A. Goldblum, a founding member of the firm, received an M.B.A. from the University of Illinois and is a 1989 graduate of the University of Pittsburgh School of Law. His practice is focused on assisting businesses and business owners with tax and business planning issues. Mr. Goldblum is a frequent lecturer at banking and other financial institutions.

Steven L. Sablowsky, a founding member of the firm, received his masters degree in tax law from the Georgetown University Law Center after graduating from

the University of Pittsburgh School of Law in 1974. His practice concentrates on the areas of tax planning, handling tax controversies at all levels of government and in the courts, estate planning and general corporate matters.

Mitchel Zemel, a member of the firm, has been a litigator since earning his law degree from the University of Richmond in 1994. Prior to attending law school he was a newspaper journalist for almost 10 years. His practice focuses on litigation, and avoiding litigation, for small and mid-size businesses, as well as general business representation and real estate transactions. Mr. Zemel also has an extensive insurance defense practice.

Theresa A. Malmstrom, a member of the firm, has been practicing in the estate planning and corporate areas since earning her law degree from the University of Pittsburgh School of Law in 1993. She works closely with individuals and small business owners to plan and implement coordinated estate and business succession plans.

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someone thinks was said, but by what you agreed, in writing, would occur.

You work with your accounting department or accountant to ensure your money is being wisely spent, properly allocated. Working closely with your attorney, ensuring he or she fully understands your business *and* your goals helps ensure that the attorney's specialized knowledge keeps you in control of your business. While it is stating the obvious, avoiding legal problems is many times over far less costly than reacting to them.

For this reason we strongly recommend a periodic review of your corporate documentation to identify those areas that need to be updated to reflect changes in the law, as well as changes in your industry. Included in such a review would be an update of your corporate records to ensure

they accurately reflect the status of your business entity (whether a corporation, partnership or limited liability company). These records include minute books, which should be regularly updated. Such a review also often reveals where documentation should exist but does not. For instance, many business owners fail to properly document personal loans to their business, which can result in a loss of priority if the business falls on hard times. The review should also include regularly utilized documents such as purchase orders, contracts and leases.



Many businesses have been using the same forms for years, and changes in the business climate as well as the law must be reflected in such documents to be certain they provide the most protection possible.

If we can be of assistance in this regard, please do not hesitate to contact us.

Please make a note of our new domain name (gszlaw.com) and new email addresses ("employee's first name" @gszlaw.com), and pay a visit to our new web page at www.gszlaw.com.

We invite you to take a look at our new web page. The address is www.gszlaw.com. Our email addresses have been changed to comport with the new domain, so all of our addresses now end in "@gszlaw.com" - you can still reach anyone in the firm by placing their first name before the domain name.

If you have any comments on the web page, we'd love to hear them. Let us know if you would like to see additional information on the site, or even if there are aspects of it you do not like.

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