

THE MEMORANDUM

The Digital Version

To: Exclusively for our clients and friends.
From: The Klammer Law Office, Ltd.

September 2010 Issue

Protect Yourself

5 RULES TO BETTER PROTECT YOUR PERSONAL ASSETS WITH ONE NEW BONUS RULE!

Those of you who own a business, whether as a corporation or a limited liability company, you likely chose the business form to protect the personal assets of your family from the risks associated with business life. Unfortunately, the doctrine known as piercing the corporate veil leaves personal assets at risk, unless the business owners remain vigilant and continue to treat the business with integrity as a distinct entity, separate and apart from their personal lives. Too often, business owners learn when it's too late - as they are sitting with their attorney discussing a recent lawsuit - that they have done too little to protect the business and their family.

When in doubt, follow these five simple rules our prior news letter - **with the one new "bonus rule"** - and you will be much better prepared to respond to attacks on the corporate veil:

BONUS RULE:

This new rule makes our list the *New and Improved Asset Protection List*. Be absolutely sure to execute all documents in your business capacity. Sign everything with an indication "President, XYZ Corporation" or as the designation may be. This alone may protect your personal assets in business transactions better than any other rule. This is a must do!

Rule 1: Don't lie:

Sounds obvious, but evidence of fraud is one of the oldest, universally accepted, and simple means of piercing the corporate veil. Ensure that both the owners and employees of the business behave honestly when representing the business and address customer complaints promptly.

Rule 2: Don't commingle assets:

Don't pay your mortgage, car payment or other personal expenses with the business account. The simplest way to demonstrate that a business owner has not treated the business as a distinct entity is by showing that the assets of the owner and the business have been commingled.

Rule 3: Don't undercapitalize:

Ensure that the business has sufficient resources to address customary business risks. Simply stated, the business should have enough capital to truly operate in its stated business.

Rule 4: Do keep corporate records:

Observe corporate formalities - owners of limited liability companies will benefit from this advise as well. For instance, issue stock, elect officers and directors, adopt a close corporation agreement, keep minutes and authorize expenditures. Corporations and limited liability companies are legal fictions and they only exist through this record keeping. In fact, Ohio law requires such bookkeeping.

Rule 5: Do have annual meetings:

Hold an annual meeting. In small businesses the owners likely meet or at least talk on a weekly basis. Why not record the minutes of some of those meetings in the corporate record book, so this evidence is available when you need it. And, remember, the absence of this evidence might be powerful evidence against you later.

After ensuring the business entity you choose offers you protection from personal liability, ensure that the entity is treated with integrity. Lawsuits are bound to happen. You'll rest much better knowing your lawyer has reliable evidence to use in defense of attacks on the corporate veil.

LAW FIRM NEWS

Darya Jeffreys Klammer is the **President of the Mentor Schools Foundation**. The charitable organization which raises funds for Mentor Schools projects. The Foundation is preparing the **10th Annual Pancake Breakfast** scheduled for Thanksgiving Day at Yours Truly in Mentor. It's a huge hit and the Shibley family of Yours Truly gives greatly to the event. Mark your calendars.

Joseph R. "Randy" Klammer has just printed for final edit the draft of his first book, a user friendly guide to Ohio law for non-lawyers. It should be ready by the Holidays as a perfect gift or stocking stuffer.

You may remember, Randy is also the President of the Lake County Bar Association. If this newsletter is not enough, you can read his President's Columns on line at <http://www.lcba-ohio.org/president.htm>

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