

Business Owner Audit Form

This form is intended as a mechanism to heighten awareness of potential issues with your company and your personal finances. This form does not replace the value of an in-person consultation with an attorney, to fully evaluate your specific needs and any possible legal recommendations. The legal landscape changes on an ongoing basis, and the questions, time frames, and comments below are simply general practice guidelines which may not reflect the need for immediate attention based upon recent changes in the laws affecting your business or personal matters. If any of the answers below are either “no” or “uncertain”, a personal consultation with an attorney is recommended. Other answers will likely be either “yes” or “not applicable.” If a personal consultation is desired, feel free to contact The Vaughn Law Offices at your earliest convenience.

I. **Ownership interests** (please select the category which applies to your business)

A. *Sole Proprietors*

- Have you filed with the state for incorporation?
- Have you registered with the IRS under the most favorable tax approach (S-Corp, 501(c)(3), etc.)
- Are you current on any annual state corporate filing requirements?
- Are you adequately insured against the risks faced in your industry, to avoid any personal exposure for business liability?
- Have you adequately separated business and personal finances?
- Have you adequately protected any separate v. marital interest in the business?

B. *Partnerships (including LLCs)*

- Have you filed with the state for incorporation?
- Do you have a partnership and/or operating agreement?
- Have you had your partnership and/or operating agreement reviewed by legal counsel during the past five years, or earlier if there has been any significant change to the business operations and/or ownership?
- Does your partnership and/or operating agreement contain terms for any buy-sell arrangement, or do you have a separate buy sell agreement? Is it funded?
- Do you have terms in the event a partner/member dies, divorces, becomes incapacitated, or is unable to continue in the business?
- Have you registered with the IRS under the most favorable tax approach (S-Corp, 501(c)(3), etc.)

- Are you adequately insured against the risks faced in your industry, to avoid any personal exposure for business liability?
- Have you adequately separated business and personal finances?
- Have you adequately protected any separate v. marital interest in the business?
- Are you current on any annual filing requirements for the state and federal government?

C. Corporations (not publicly traded)

- Has your corporation been properly registered with the state and federal government?
- Do you have by-laws which have been reviewed by legal counsel in the past five years, or sooner if there have been changes to your company?
- Has your stock been properly issued, and in compliance with the laws governing your chosen entity?
- Are you conducting annual audits to ensure that your Board is in compliance with by-laws and fiduciary responsibilities?
- Are you conducting annual audits to ensure that your Board minutes are in compliance with by-laws and legal requirements?
- Are there minutes for all meetings of shareholders and directors?
- Is your stock ledger current?
- Do you keep a Minute Book with your Articles, Bylaws, and Minutes?
- Have you registered with the IRS under the most favorable tax approach (S-Corp, 501(c)(3), etc.)
- Are you adequately insured against the risks faced in your industry, to avoid any personal exposure for business liability?
- Do you have a buy-sell agreement?
- Are you current on annual filing requirements for the state and federal government?

D. Franchises (one of the above categories would also apply)

- If starting a franchise, have you received and reviewed the Franchise Disclosure Document with legal counsel?
- If operating a franchise, have you reviewed your corporate documents with legal counsel to make sure they are in compliance with your Franchise Agreement?
- Have you discussed with legal counsel whether terms of the Franchise Agreement could be made more favorable?
- Have you discussed with legal counsel the extent of personal liability pursuant to your Franchise Agreement?

II. Internal operations

- Do you have an operations manual and/or employee manual?
- Do you have express language confirming the “at will” employment policy?
- Do you have a written non-discrimination policy?
- Do you have a written sexual harassment policy with multiple avenues available for grievances?
- Do you have a written job description for each employee?
- Has your employee manual been reviewed by legal counsel in the last two years for compliance with changes in employment laws?
- Do you keep individual employee files, with separate files for any medical information provided?
- Do you have an independent contractor agreement for independent contractors?
- Has your independent contractor agreement been reviewed by legal counsel in the last two years for compliance with federal and state law?
- Do you have a valid and enforceable non-compete/non-solicitation agreement for employees?
- Do you have a valid and enforceable confidentiality/trade secret agreement for employees and independent contractors?
- Do you have a written severance agreement and waiver for terminated employees?
- Do you have employment practices liability coverage insurance?
- Has legal counsel reviewed and advised you concerning any licensing or regulatory issues for your business?
- Do you utilize the services of a qualified accountant?
- Are you keeping clear records of income and expenses?
- Do you utilize the services of a qualified insurance agent?

III. External operations

- Have you had legal counsel review any lease and/or real estate purchase contract to protect the best interests of your business?
- Have you addressed accounts receivable with legal counsel to identify any possible legal solutions to collections?
- Has legal counsel reviewed and approved contracts routinely used in your business operations, including any subcontractors, suppliers, distributors, licensees, or designers?

- Has legal counsel reviewed and approved any contracts for promotion of your business, including marketing or advertising?_____
- Do your standard contracts provide that amendments to the contract may only be made in writing?
- Do your standard contracts expressly limit your liability?
- Do your standard contracts provide for disputes to be resolved in courts where you are located?
- Is there an attorneys' fees provision in each contract?
- Has legal counsel provided guidance and assistance for any considered buy-out or asset purchase, either of or by your business?
- Has legal counsel reviewed and approved your point of sale procedures?
- Are you complying with all the terms of your contracts and leases?
- Have you protected your trademarks, copyrightable materials, trade secrets, and patentable inventions?
- Have you obtained any needed licenses for use of intellectual property of others?
- Have you registered your trade name?

IV. Estate and succession planning

- Do you have a will and/or trust?
- Do you have valid powers of attorney for others to care for you if you are incapacitated?
- Do you have a beneficiary deed for any real estate you own?
- Has your estate planning been reviewed by legal counsel for changes in law in the last two years?
- Do your estate planning provisions address potential exposure of assets for long term care?
- Do you have provisions, recommended by legal counsel, for succession planning of your business?
- Are your corporate documents in conformity with your estate planning documents?
- Do you have a premarital or marital agreement that is consistent with your business planning and estate planning?
- Are you adequately insured and financed for estate planning needs and desires?
- Do you utilize the assistance of a qualified financial planner?

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