



Column: Legal preparations for a home business, part one

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These days, many people are leaving the mother ship of corporate life to become self-employed. Our nation boasts a surplus of high-skilled workers that, combined with continued trends in downsizing and outsourcing, is creating a plethora of jobseekers that have no choice but to be self-employed. This is particularly prevalent in the baby boomer generation.

Many people become consultants who can work anywhere and, therefore, work out of their homes to save on expenses and enjoy convenience. Here are some of the key topics any self-employed person needs to consider at the outset:

Entity formation

Gloria runs a successful landscaping business from home, storing equipment in her garage and employing three younger workers. In the course of a tree removal, a massive branch fell on the customer's house, damaging the roof and the master bedroom. Compensating the customer could cost tens of thousands of dollars.

Although it is legal to be engaged in your business as a sole proprietorship or "doing business as," it is almost always better to operate your business as a corporation or limited liability company. In addition to the professionalism of having an entity, the entity affords some protection by shielding you from liabilities caused by others in the course of the business' activities. Therefore, while the business itself will be liable for acts or omissions by employees, agents or contractors, the business owner would not have his or her own assets at risk (like a house or savings) unless the claim arises from something the business owner did.

Protecting confidential information

Mario was thrilled when a national charitable foundation hired him to help with a major campaign. He quickly signed a contract, not realizing the terms of the agreement required he divulge a list of former donors he had amassed over years as a professional fundraiser.

Your value as a self-employed consultant or salesperson derives from your years of experience, know-how and contacts. Therefore, you must protect your “special sauce” – your proprietary information and sales base. This is facilitated with confidentiality and nondisclosure agreements, which will also include provisions that prohibit solicitation of each other’s customers, clients and employees. Frequently, consultants are all too willing to sign such documents provided by the bigger companies for whom they wish to work. Without legal review, you might find yourself having given the other party access to your contacts and know-how without knowing it.

Employees vs. independent contractors

“Grandma’s Kitchen” was such a success that Grandma Esther had to hire an assistant, Delores, to meet the demand for her home-baked cookies and cakes. Should Delores receive benefits at her new job?

If your business merits hiring underlings or associates, you need to determine whether they should be employees or independent contractors. Many small-business owners try to consider everyone a contractor in order to not put them on payroll, to have more flexibility and to save money on a payroll service. However, the rules about whether someone is an employee or independent contractor are very complex and based upon the particular facts and circumstances of each unique relationship. The penalties for treating someone as an independent contractor for tax purposes when he or she is really an employee are significant, and you can avoid big headaches by discussing each situation with an experienced attorney.

Contracts with third parties

Making the move from a high-pressure international publishing house to freelance editing from home was easy for Arthur, but his contract as a consultant to his former employer was more complicated.

Most businesses need a basic contract that obligates the client to make payment and evidence the amount of your compensation, and protects you from delinquent customers by imposing late charges, interest and court costs. In addition, most consultants would benefit by a contract that, in simple terms, defines the scope of the project, pays the consultant for extras, further protects confidential information and limits your liability in case the other party alleges it is dissatisfied with the work or has had other problems. More complicated contracts will involve such issues as fixing defective work, warranties, indemnification and dispute resolution. Some self-employed people make the mistake of using nothing more than purchase orders, which usually are not binding, or of blindly signing contracts provided to them by their client or customer. These contracts are typically one-sided, often prepared by in-house attorneys who have added provisions buried in the “boiler plate,” which can go unnoticed by a layman and create trouble for you. For these reasons, having a lawyer review such contracts is very important, and typically, an experienced contract lawyer will not need to charge much to review contracts on small projects.

Of course, these are just some of the issues baby boomers must consider when launching a home business. Other equally important concerns will be covered in Part 2 of this article.

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