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OPINION

Today's Business: Resolve to Secure Your Business in the New Year

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In the midst of the holiday season, hopefully we're enjoying friends and family, and wishing for health, happiness and prosperity in the New Year.

The unfortunate reality is that in the midst of celebration, we are reminded of personal and financial pressures that business owners and workers face, which may be greater this year due to rising interest rates and the need to keep lending relationships current. This also can serve as a wake-up call to take the steps to eliminate risks of theft in your business — and bad conduct by business partners acting for their own personal interests.

Businesses need protections to eliminate the risks of fraud and embezzlement. These frauds most often are committed by trusted office managers, bookkeepers or others with check-signing authority. A trusted employee may start by taking business funds for personal use. Often, what begins as something intended to be a single instance, becomes an ever-growing scheme. Safeguards should include careful consideration of limiting the number of persons who may sign checks and requiring two signatures for payment of larger expenses.

Regularly reviewing bank and credit card statements is key. Does something look out of place, such as duplicate payroll checks or multiple payments to one vendor in the same month?

Unfortunately, self-dealing, most particularly in professional practices and small businesses, including those family owned, is all too common at any time of year. This type of conduct often involves one owner taking the benefits of a business transaction or opportunity for personal use without adequate disclosure to a partner or member.

As an owner of a business, there are normally remedies available to identify misfeasance or malfeasance. The source of those rights may be found in business operating agreements or bylaws that spell out how decisions can be made and the obligations of each owner to the other, including minority owners. That is often the first place to look to see what, if any, procedures and remedies are permitted, including whether any dispute must be resolved in arbitration, rather than the courts.

Agreements, as well as legal precedent, usually afford a business owner, member or partner the right to disclosure of financial information in the form of an accounting so that there is transparency in all business dealings.

The law also recognizes fiduciary duties that one business owner owes to another. Generally, a fiduciary duty is the obligation of persons in special relationships with a business to exercise the utmost good faith and fair dealing, including duties of care and loyalty. This type of special relationship is often found to exist between and among agents, partners, members of a limited liability company, lawyers, directors, employees and executors. If one breaches his or her fiduciary duty, the injured party can bring a claim to recover damages.

In many instances, a breach of fiduciary duty claim will also constitute a violation of the Connecticut Unfair Trade Practices Act (CUTPA), although there are certain exceptions, such as with the employer/employee relationship, which does not come within the reach of CUTPA.

The New Year is just around the corner. If your business has not instituted adequate risk measure, resolve to do so at your earliest opportunity. Review your financial records. Read and understand your operating agreements and consider adjusting the terms if they are not adequate to serve ever evolving business goals. This will go a long way to ensuring success in 2023.

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