**OPERATING YOUR BUSINESS AS A CORPORATION**

**OR A LIMITED LIABILITY COMPANY**

There are legal benefits in operating your business through a corporation or a limited liability company (hereinafter “LLC”). If you have a corporation or an LLC and you enter into contracts in your representative capacity, you are often not personally liable for that obligation. For example: If you sign your office lease “Jim Jones, Member, ABC Realty, LLC” and your LLC is legally established and sometime later the business does not work out and you decide to close it down and leave the premises before the lease term is up, generally the landlord cannot come back and make personal claims against you unless you have signed a personal guaranty of the lease. If they do require a guaranty, you may be able to negotiate a limited guaranty.

If your company is corporation or LLC, it may also give you an advantage over a competitor who is not. For example: If your company provides services to customer on a regular basis, the customer may prefer you to be incorporated or be an LLC since the state is less likely to find your company to be an employee of the customer.

However, under New Hampshire law if your company is a corporation that is not paying its employees’ wages and you know about it and permit that to occur, you could also be also liable to the unpaid employee. If the company is an LLC it is possible you would not be liable to the unpaid employee. Also New Hampshire’s discrimination law could subject you to personal liability for discrimination or retaliation even if you do the acts as a representative of the legal entity. For example: If an employee of your corporation or LLC comes to you and complains that he believes he is being racially discriminated against and you legitimately fired him for performance issues, he may claim you fired him in retaliation for the discrimination claim. He can make that claim not only against the company, but against you personally. Also you can be held personally liable for your own negligence or intentional wrongful acts even though you do them as a representative of the company.

The foregoing is an example of why, in addition to often being prudent to incorporate or establish an LLC for your business, it is important to have a comprehensive discussion with your insurance agent as to what insurance coverage you should have. Most commercial liability policies exclude employment practice liability and therefore you need a separate additional endorsement on your insurance policy. Even if you have done nothing wrong, it could cost money to defend yourself to prove that. With the benefit of insurance, you have a source to pay it if there is coverage.

You have to follow the rules of a LLC or corporation. Your failure to file annual returns with the New Hampshire Secretary of State’s Office and all follow through with the formalities of the entity such as for corporations; use the company’s account as your own personal checking account; or take excessive distributions so that the company cannot pay its creditors on time all can result in personal liability of you. To the extent you make a loan to the company and pay yourself back before other creditors can also permit the other creditors to recoup from your personally the loan proceeds you paid back if though the loan from you to the company was legitimate.

Lastly, to the extent you closed down your company and opened up under a new business name, there might be what is called successor liability under the new company for the predecessor’s debts. There are a number of factors the court may determine the successor corporation or LLC is really just an extension of the previous corporation or LLC and is still liable for the debts incurred by its predecessor.

In summary, incorporating or creating a LLC can be an important part of a successful business plan, but others are learning of the laws applicable to your business, including employment laws and having a detailed discussion with your insurance agent to determine the various types of insurance coverage that are available so that you make an informed decision of what insurance coverage you should have for the operating of your business.