



TEN COMMON LEGAL
PITFALLS PLAGUING
SMALL BUSINESS OWNERS

What's it ultimately boil down to?

- Organization and Governance
- Anticipating, Preparing for, and Handling Disputes
- Proper Handling and Protection of Data

Organization and Governance

- Failure to incorporate or organize a business entity.
- Failure to have a business succession plan in place.
- Failure to properly govern a company according to state law.



Failure to incorporate or organize
a business entity.

Failure to incorporate or organize a business entity.

- What is incorporation?
 - Formal registration with Texas Secretary of State (or states where operating)
- Key purpose = Separate business liabilities from personal assets
- Assumed Name Certificate / Trade Name



Failure to have a business
succession plan in place.

Failure to have a business succession plan in place.

- **What happens when folks leave?**
 - Company Agreements / Bylaws / Partnership Agreements
 - Buy/Sell Agreements
 - Estate planning documents (or intestacy laws)



Failure to properly govern a
company according to state law.

Failure to properly govern a company according to state law.

- **What is governance?**
 - Texas Business Organizations Code
 - Company Agreements / Bylaws / Partnership Agreements
- **Key purpose = Separate activities helps ensure separation of business liabilities and personal assets**

Anticipating, Preparing for, and Handling Disputes

- Failure to secure and adequately negotiate written agreements from vendors, customers, landlords, and/or employees.
- Failure to secure adequate insurance coverage and seek out adequate indemnification.
- Failure to properly handle disputes, threats, and/or litigation with dissatisfied customers, vendors, landlords, and/or employees.
- Failure to establish human resources guidelines or an employee manual.



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written agreements from vendors,
customers, landlords, and/or employees.

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- Contract = Promise
 - Does not always have to be in writing, but should be
- Sometimes must be in writing
 - Statute of Frauds
 - Residential construction



Failure to secure adequate insurance coverage and seek out adequate indemnification.

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- CALL YOUR INSURANCE BROKER!
- Review requirements in contracts
 - Can they be negotiated?
 - Are they enforceable?
 - Do you have enough?
 - Can you comply if necessary?
 - Have someone review and weigh in!

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Failure to properly handle disputes,
threats, and/or litigation with dissatisfied
customers, vendors, landlords, and/or
employees.

Failure to properly handle disputes, threats, and/or litigation with dissatisfied customers, vendors, landlords, and/or employees.

- Can't please everyone, so what?
 - Bad PR
 - Is saying sorry enough? Will it shoot you in the foot?
 - When to dig your heels in
- Litigation
 - ADR clause?



Failure to establish human
resources guidelines or an
employee manual.

Failure to establish human resources guidelines or an employee manual.

- **Employee handbook**
 - Setting expectations
 - Protect from liability
 - Establishing policies and procedures
 - Conveying standards or benefits
 - Ensuring uniformity

Proper Handling and Protection of Data

- Failure to properly handle tax obligations.
- Failure to protect intellectual property and trade secrets.
- Failure to secure sensitive customer data, personally identifiable information, or sensitive personal information.

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Failure to properly handle tax
obligations.

Failure to properly handle tax obligations.

- **CALL YOUR CPA!**
- Federal and state requirements
- Texas business personal property taxes
- Failure to comply? = Civil or criminal penalties



Failure to protect intellectual
property and trade secrets.

Failure to protect intellectual property and trade secrets.

- What is IP?
 - Patents
 - Trademarks
 - Copyrights
- Trade secrets, protective orders, nondisclosure and confidentiality agreements



Failure to secure sensitive customer data, personally identifiable information, or sensitive personal information.

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- CALL YOUR IT GUY!
- Cyber security issues
- Loss of sensitive customer data
- Consequences of a data breach = Depends on state where customer resides



Resources

A photograph of the interior of the Texas State Capitol dome, showing the ornate architecture and the central fresco.

ANY QUESTIONS?

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