<u>Running a Small Business and Protecting Your Hard-Earned Assets</u>

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Most people in Teton County are running their own small business- or several. For a small business owner, navigating the ins and outs of every aspect of the business operation can be overwhelming. There are three key steps that should be followed by every business owner to ensure hard-earned profits are protected from unexpected liabilities.

First, the business should be incorporated or run as a limited liability company. The reasons for this are simple. An incorporated business limits liabilities which may be incurred as debts, through personal injuries of third parties, or contract disputes. If properly run, the business' liabilities, if any, belong only to the business, and cannot be imputed to the individual owner or owners running and managing the business.

I will use my client and friend, "Fred," as an example. Fred worked very hard for a long time, and earned enough money to buy a fabulous home in Jackson Hole. After retiring from his none-to-five job, Fred decided to follow his life-long dream of running a ferret farm. Fred was conscientious and did extensive research on ferret farming and invested some of his hard-earned money into the operation. Unfortunately, one of Fred's prized ferrets contracted a rare but communicable and deadly virus, which spread throughout his ferret farm. Fred incurred thousands of dollars of veterinary bills trying to save his ferrets. Sadly, only half of Fred's ferrets survived the outbreak and he suffered substantial losses in addition to the unexpected veterinary bills. Fred's ferret farm operation was unable to its his regular utility bills, much less for the ferret feed and fresh cages purchased to house his stock. Fred's ferret farm was in debt and there were creditors looking to get paid.

The good news for Fred is that he set up his ferret farm with the advice of his lawyer and his C.P.A. and properly protected his personal assets- including his fabulous home in Jackson Hole. Fred incorporated the ferret farm as a Wyoming "close corporation", with Fred being the only shareholder. Fred properly "capitalized" his corporation by purchasing insurance. First, Fred obtained ferret life and health insurance, which paid benefits to Fred for veterinary bill and for the ferrets he lost. Fred also obtained general liability insurance for the farm, in case a visitor accidentally injured herself on the grounds. Fred also obtained worker's compensation, which provides health and disability insurance to his employees if they are injured on the job and prevents them from suing Fred, even if they are injured at the farm as a result of Fred's negligence. Fred further protected his personal assets and prevented creditors from "piercing the corporate veil" by holding the ferret farm out as a corporation. All of the farms' business cards, invoices, letterhead, and bank accounts had the "Inc." following the farm's name, putting everyone on notice that the farm was incorporated. Finally, Fred was careful never to mingle his personal funds and accounts with his corporate accounts. In that way, the creditors were only able to pursue payment from the ferret farm, and could not seek to collect money or assets owned by Fred individually.

Fred also hired a C.P.A. before opening up the farm for business. His C.P.S. helped Fred get a tax i.d. number for his corporation and set up Fred's accounts to pay state and federal taxes and to ensure the worker's compensation account was properly set up with his payroll account. Fred also was very careful to obtain all of the local, state and federal licenses and permits he needed before opening up his farm. In this way, Fred successfully started a small business and was able to protect his assets.

The second important step business owners must always remember is to enter into only written agreements, and to avoid oral agreements. One of the most expensive mistakes a small business owner can make is to conduct his business with other individuals without a written contract. Even when there is a longstanding relationship of trust and friendship, people will get their signals crossed, so to speak. The misunderstanding will always result in one person feeling like they are losing money over the deal. When enough money is at stake, a lawsuit could result. It is for that reason that all transactions and agreements must be reduced to writing. That includes lease agreements, agreements for goods and services, and agreements to sell property. While it is hard to resist a handshake deal, your business, your friendships *and* your pocketbook will be better off with a written contract.

A third essential step is to draft and *execute* a solid partnership agreement if your business includes other shareholders or investors. The agreement should include provisions as to how profits and losses will be distributed. Most importantly, however, the agreement must have a buy-out provision that gives you and your business partners an exit strategy. There are many different ways to draft a buy-out provision, but the most common calls for an appraisal of the business and purchase of the partner's interest according to the interest as calculated by the appraised value. If agreement cannot be reached with an appraisal, then the alternative is to liquidate or sell the business. Without a buy-out provision, splitting up an interest in a business is as messy and emotional as a divorce proceeding, and sometimes much more costly.

While there are many more pitfalls to be aware of in running a business, following these three key steps will keep business owners on the right path. Although it may seem time consuming or inconvenient to incorporate and execute written agreements, it will save you significant time and money in the long run, and allow you to focus on what you are good at – running your particular business and making your clients and customers happy.