



Small Business Legal Audit Checklist

© 2008 Stuart Adams

1. Basic Disaster Preparation and Planning

None of us like to think about disasters, and many of us have an “it won’t happen to me” attitude. The following questions should help you gauge your ability to survive some common “disaster” scenarios.

- yes* *no* If all of the computers in your office were stolen over the weekend, do you have: 1) all the serial numbers of the equipment; 2) the original cost of the equipment; 3) the current value of the equipment; 3), and the ability to recreate all of the data on the computers?
- yes* *no* If your office was completely destroyed by fire, could you contact all of your clients or customers, recreate all your computer data, contact your insurance company, process invoices, contact other “VIPs” and generally get your business operational again? Who would be responsible for performing each of these functions? _____.
How long would it take? _____. Is that satisfactory? _____.
- yes* *no* If you could suddenly not come into the office on Monday, have you designated the person who could pick up your critical duties? Even if you have a “partner” or assistant, does he/she really know as much as necessary about your critical duties?
- yes* *no* If you were unable to come into the office for a few days or weeks, could anyone actually find anything on your desk or in your files?
- yes* *no* Does the answer change if your assistant was off sick or away on vacation at the same time?
- yes* *no* If a partner or key associate was suddenly disabled, do you or someone in your office know his/her schedule for the next three months? Do you and at least one other in your office know the status of all matters in your office?
- yes* *no* If you had a heart attack tonight, are your files and records organized so someone could pick up your duties without your clients or customers suffering any disadvantage, or you losing them altogether?
- yes* *no* If you, a partner, or key assistant in your business were disabled for an extended period of time, will you be able to draw a salary? If so, how much and for how long? \$: _____ Time: _____ If you are a sole operator and the only rainmaker, how will expenses of the firm be paid while you are out and unable to make rain? _____
- yes* *no* If your secretary/key assistant/bookkeeper suddenly quit, do you know their filing systems so that you can find information in their desks, in their (or your) files, or on their computers? Do you have copies or know where they keep the keys for filing cabinets, etc.? Do you know all their respective passwords (including voice mail, computer login, e-mail, the accounting package and any other software applications they use)?

yes no If one of your staff members disappeared with important business records, customer information, client funds, etc., would you have sufficient records to determine what was taken and when?

yes no If you were to die or be completely unable to return to work, would this place an insurmountable burden on your partners and spouse? Is this the way you want to be remembered? What would your desk, customer files, and office organization say about you to anyone who would have to step in to assume responsibility? _____

If you were unable to answer all of these questions as quickly or as adequately as you would like, then you need to do some disaster recovery planning.

Preparation and Prevention: Preparation and Prevention are essentially about risk management. What can you do to lessen the possibility or the impact of an adverse interruption or disaster occurring to your business?

Response: Response is the immediate reaction to an incident or emergency. It addresses matters of personal safety, and the policies, procedures and actions to be followed in the event of business interruption.

Resumption: Resumption refers to the process of planning for and/or implementing the resumption of time-sensitive business operations immediately following a disaster (ideally within a specified time).

Recovery: Recovery is the process of planning for and/or implementing the restoration of all company operations and services to pre-disaster levels.

2. Risk Management Every entity faces a variety of risks from external and internal sources that must be assessed.

yes no Do you have structured approach to risk management?

yes no Are one or more people in your company assigned to manage company risks?

yes no Do you have a current, reasonable assessment of the potential severity of loss and probability of occurrence of all company business risks?

yes no Do you have control activities (the policies and procedures that help ensure management directives are carried out) in place?

yes no Do you have an impact analysis which shows results in the differentiation between critical and non-critical organization functions?

yes no Have you documented the impact scenarios that form the basis of the business recovery plan?

yes no Have you created a solution design to identify the most cost effective disaster recovery solution that meets at least two main requirements from the impact analysis?

yes no Do you have a written disaster and recovery plan in place?
If so, is the plan one which:

yes no establishes the crisis management command structure

yes no establishes the location of a secondary work site (where necessary)

yes no establishes telecommunication architecture between primary and secondary work sites?

- yes* *no* establishes data and essential processes replication methodology between primary and secondary work sites?
- yes* *no* provides the equipment, tools and application and software required at the secondary work site, and
- yes* *no* establishes the type of physical data requirements at the secondary work site?
- yes* *no* Are all appropriate personnel sufficiently aware of the existence and methodology involved in the company disaster preparation and recovery plan?

3. Insurance Do you have, appropriate insurance to cover personal and business risks?
(mark NA if you feel this category doesn't apply to your business)

- yes* *no* / G NA Property Damage Insurance: Covers damage to your business property.
- yes* *no* / G NA Liability Insurance: Covers liability for injury to person or property caused by the company or its employees.
- yes* *no* / G NA Products Liability Insurance: Covers liability for injuries caused by the company's products.
- yes* *no* / G NA Vehicle Insurance: Covers liability for injuries caused by company vehicles and employee vehicles when used for business purposes.
- yes* *no* / G NA Business Interruption Insurance: Covers expenses incurred if the business is interrupted by fire or other events, as well as lost profits.
- yes* *no* / G NA Key Man Life Insurance: A life insurance policy payable on the death of a key employee.
- yes* *no* / G NA Director's & Officer's Liability Insurance: Indemnifies officers and directors of the company for expenses incurred as a result of acting on behalf of the company.
- yes* *no* / G NA Health & Medical Insurance: Covers various health and medical needs for employees and dependents.
- yes* *no* / G NA Workers Compensation Insurance: Covers injuries to employees for work-related matters.
- yes* *no* / G NA Employment Practices Liability Insurance: Covers various lawsuits brought by employees, such as for sexual harassment and wrongful termination.
- yes* *no* / G NA Web Site Insurance: Covers various claims associated with the company's Web site.
- yes* *no* / G NA Errors & Omissions Insurance: Covers claims for malpractice or errors and omissions in rendering services.
- yes* *no* / G NA Crime Coverage Insurance: Covers thefts and disappearances of company assets.
- yes* *no* / G NA Umbrella policies: Additional relatively inexpensive coverage.

For each of the above which are needed, have you recently checked to see if the:

- yes* *no* Premiums are competitive?
- yes* *no* Coverage is adequate?
- yes* *no* Deductibles are optimized?
- yes* *no* Exclusions are appropriate?
- yes* *no* There are alternative ways to deal with this risk?
- yes* *no* There are additional ways to deal with this risk?

4. Business Planning

- yes no Do you have a detailed, written business plan for the company?
 yes no Have you recently conducted an analysis of the performance of the company against business plan projections?
 yes no Have you recently conducted a detailed SWOT analysis?
 yes no Have you taken action on the results of your SWOT analysis?

5. Basic Company and Market Vision

- yes no We agree on our core values and have reduced them to writing. They are: _____.
- yes no We have articulated the image we want to project in the marketplace and how we will do it. That image is: _____.
- yes no Our company is famous for something important in our market that attracts customers, and everyone inside our company and all of our customers can name it. It is: _____.
- yes no Our position in relation to our major competitors, in terms of company size, economics or reputation has improved in the last year or two, and we can prove it.
- yes no We have identified a limited number of areas for growth and investment, and every person in the company can identify them. They are: _____.
- yes no We have added recently or identified at least one new product or service area to be added in the next year. It/they are: _____.
- yes no We have eliminated at least one product or service in the past two years, or identified at least one product or service area to be de-emphasized or divested in the next two years, and there is a plan to do that. The products and services area(s) is/are: _____.
- yes no We have a strategy for use of technology in our practice clearly calculated to produce competitive advantage. That strategy is: _____.
- yes no We are positioned to withstand changes in economic cycles. Our growth market strategy is: _____.
- Our down market/recessionary strategy is: _____.
- yes no We are positioned to transition even sudden changes in leadership. Our succession plan at a firm-wide leadership level is: _____.
- yes no We universally and institutionally recognize that we are engaged in a war for talent. Our strategies to win that war are: _____.
- yes no Our employees truly understand why our customers choose us and not another company. The reason(s) is/are: _____.
- yes no Our strategic plan is articulated in a written document less than 20 pages long.
- yes no We agree on the size we want to be in one year and in three years, and how we will get there (organic growth, laterals, mergers, acquisitions, etc.).

yes no We have objective (quantified) revenue and profit targets that are understood by all stakeholders and a plan to get us there.

6. Government Filings

yes no Has the company obtained its Federal Employer ID number?
 yes no Has the company obtained its State Employer ID number?
 yes no Have any required local and state licenses and permits been obtained?
 yes no Has the company qualified to do business in all states it is required to?
 yes no Have all annual information statements been filed with the Secretary of State? (varies from state to state)

7. **Company Minute Book** Corporations and limited liability companies have similar but not necessarily identical issues. Laws typically require certain company records to be in the office.

yes no Do the Articles of Incorporation/Organization provide for sufficient authorized number of shares/membership units?
 yes no Is a copy of the Articles in the Minute Book?
 yes no Is a copy of the Bylaws/Operating Agreement in the Minute Book?
 yes no Are there minutes for all meetings of shareholders/members?
 yes no Are there minutes for all meetings of directors/members?
 yes no Are there minutes of annual shareholder/member meetings?
 yes no Are all written consents of shareholders/members and directors/managers included?

8. Stock/Membership Unit Matters

yes no Has the company received the consideration for each sale of equity units?
 yes no Is the Stock/Membership Unit Ledger current?
 yes no Were all sales of equity in compliance with applicable securities laws?
 yes no Did the Board of Directors/Manager properly authorize sale of all equity?
 yes no If necessary, did the shareholders/members properly authorize the sale of equity units?
 yes no Did the company receive the full consideration for the issued equity units?
 yes no Were stock/membership unit certificates issued?
 yes no Did the stock/membership unit certificates have appropriate legends?

9. **Laws.** Has the company determined the applicability of the following laws to its business?

yes no / G NA Environmental laws; CERCLA, etc.
 yes no / G NA Worker Safety laws
 yes no / G NA Securities laws
 yes no / G NA Consumer protection laws
 yes no / G NA Advertising laws
 yes no / G NA Employment laws
 yes no / G NA ERISA
 yes no / G NA Product liability laws
 yes no / G NA Corporate or limited liability laws
 yes no Tax laws
 yes no / G NA Commercial and Real Property laws

10. Recordkeeping

- yes* *no* Is the company keeping good records of its income and expenses?
 yes *no* Is the company keeping track of all of its contracts?
 yes *no* Is the company keeping track of all employee records?
 yes *no* Is the company keeping track of all tax filings required?

11. Alter Ego/ instrumentality/ piercing the shell Your personal assets can be at risk if a determination is made that the company is the alter ego of the owner. This is sometimes referred to as "piercing the shell" of the company. The following issues are sometimes used, individually and collectively, to establish a case for piercing. Are circumstances present, or is there a chance records exist which would allow someone to make a case for piercing? Do any circumstance support:

- yes* *no* commingling funds and other assets of the entity and individual owners
 yes *no* diversion of company assets to non-company or personal uses of owners
 yes *no* failure to maintain formalities necessary for subscription of stock, approval of stock issued, etc
 yes *no* failure to maintain meeting minutes and other records, etc.
 yes *no* use of a shell to operate a single venture or aspect of the business of another entity
 yes *no* sole ownership of all the equity by one individual, or members of a single family unit
 yes *no* use of same office or business location by the entity and owners
 yes *no* employment of the same personnel by company and owner
 yes *no* concealment of true ownership, management or financial interests
 yes *no* failure to maintain arms-length relationship between related entities
 yes *no* use of entity as a conduit to procure labor, services, or merchandise for another person or entity
 yes *no* diversion of company assets to detriment of creditors
 yes *no* contracting by the company with another with intent to avoid the risk of nonperformance
 yes *no* forming a company to assume existing liabilities of another person or entity
 yes *no* enterprises consisting of multiple entities which fail to: properly approve inter-entity transactions; treat multiple entities as if they were one enterprise; which set up transactions which benefit one at the detriment of the other

12. Intellectual Property Protection

- yes* *no* Have trademark registrations been obtained for company products and services?
 yes *no* Is the "TM," "SM," or ® notice displayed properly on all company literature, the company Web site, vehicles, and elsewhere consistently?
 yes *no* Is a proper copyright notice put on all company copyrightable materials?
 yes *no* Have patents been applied for company-owned inventions and discoveries?
 yes *no* Is a trade secret protection program appropriate?

 yes *no* Have employees signed appropriate Confidentiality and Invention Assignment Agreements?
 yes *no* Have consultants and independent contractors signed appropriate Confidentiality and Invention Assignment Agreements?

- yes no Is the company infringing the intellectual property rights of others?
- yes no Is there a program in place to determine if others are violating the company's intellectual property rights?
- yes no Are all needed licenses obtained and parties properly identified?
- yes no Is the company complying with all license agreements to which it is a licensee?
- yes no Do you conduct a regular trade secret audit?
- yes no Do you take steps sufficient, under the Trade Secret Act, to protect your trade secrets?

13. Employment

- yes no Do interviewers of prospective employees know what they can and can't ask?
- yes no Is there a Non-Discrimination Policy in place?
- yes no Is each prospective employee required to fill out a good form of Employment Application?
- yes no Are job offer letters to new employees carefully drafted?
- yes no Do you use personality profiling software or tests to ensure alignment of prospective employees goals and company goals?
- yes no Does the company have all needed forms from employees (ex. W-2, I-9)?
- yes no Does the Company have an "at will" employment policy in place?
- yes no Are employees treated fairly and evenly?
- yes no Is there a Sexual Harassment Policy in place?
- yes no Do you have a program to provide incentives to retain and develop good employees?
- yes no Do you have a program to monitor employee performance and replace inadequate employees with minimal risk to the company?
- yes no Does your company engage in drug testing of employees?
- yes no Does your company have a written e-mail and Internet use policy?
- yes no Do all employees sign a non-disclosure agreement which is kept off site?
- yes no Do all key employees sign a non-compete and non-interference agreement which is kept off site?
- yes no Do you know if your company is in FMLA compliance?
- yes no Does your company have a personnel handbook and/or written policy?
- yes no Does your company require and conduct exit interviews?

14. Contracts

- yes no Are all of the company's important agreements in writing?
- yes no Are there good form contracts in place?
- yes no Do the contracts provide for disputes to be resolved in courts in the jurisdiction where the company's principal office is located?
- yes no Is there an attorney's fees clause in each contract with customers?
- yes no Does the contract say that amendments to the contract may only be made in writing?
- yes no Are there provisions in the company's standard form contracts regarding limiting the company's liability?
- yes no Is the company complying with the terms of its contracts and leases?
- yes no Do customer contracts provide for interest to be charged on accounts in arrears?

- yes no Are all contracts with vendors and customers signed by the company representative, clearly indicating they are signed as a representative of the company and not as an individual?
- yes no Does the company track expiration dates on leases and other important contracts and mark them up for action (renewal or alternate source) a sufficient time in advance of expiration?
- yes no Do company contracts have an alternate dispute resolution provision favorable to the company?
- yes no Do your contracts state or imply an unnecessary warranty?
- yes no If you provide a warranty, is there a monitored system for tracking and documenting expiration of warranty?

15. Cost Saving Measures

- yes no Does someone in your company periodically and regularly review and report on competitive status of all expense items, including inventory, rent, phone, utilities, insurance coverage/costs, etc. & survey of alternate sources, break points, etc.? If so, who is it: _____
- yes no Does someone in your company regularly review receivables collection to reduce time lag, and improve collections?
- yes no Do you review rates on lines of credit and other loans?
- yes no Do you make an effort to periodically maintain personal contact with key customers, vendors, employees, etc.?
- yes no If you were to die or become disabled, is there a person in your organization, who you trust implicitly, who could effectively manage and operate the company in your absence?

16. Succession and Exit Strategy Planning

- If you have a business partner, is there a signed buy-sell agreement in place, which:
- yes no has an appropriate method to conduct a valuation of the company?
- yes no has a plan for a reasonable transition of authority?
- yes no is funded by insurance or other adequate method, in the event of premature death or disability?
- yes no Do you have a will, power of attorney, medical designation directive, and other personal estate planning documents in place, recently reviewed, which provide adequate safeguards for:
- yes no dealing with your ownership of your company?
- yes no providing a reasonable method for liquidation of your interest in your company?
- yes no allowing your heirs to capitalize on the value of your efforts in building your company?
- yes no reflect proper planning for continuity of your business?
- yes no Does your company documentation allow for someone you trust to take over temporarily in the event of your death or disability?
- yes no Do you have a written succession plan or exit strategy?
- yes no If you have a succession plan, have you communicated it to all those who are stakeholders?
- yes no If you have a succession plan involving one primary individual to succeed you as owner and/or operator of the business, do you have a disaster plan which would allow an alternate exit or succession strategy to be

- implemented in acceptable fashion?
 _ yes _ no Are you planning to retire in the near future?
 _ yes _ no Do you have a personal financial plan which is synchronized with your business plan and your exit or succession plan?
 _ yes _ no Do you have a reasonable method of monitoring the degree to which your business is fulfilling your personal goals as they relate to your exit or succession plan?
 _ yes _ no Do you have a plan in place to maintain the value of your company as you enter the final phases of your exit or succession plan?
 _ yes _ no Do you have any business loans you have personally guaranteed?
 _ yes _ no Do you have any loans which may be over secured?
 _ yes _ no Are you considering borrowing money or otherwise raising capital in the near future?
 _ yes _ no Aside from your business, are there any other activities where you serve as a director, manager, partner, officer, or representative?
 _ yes _ no Aside from your business planning, have there been any changes in your personal affairs which might indicate your will or other estate planning documents, if any, should be modified or at least reviewed? If so, and you wish to share them with us, they are: _____

Overall, what do you consider the primary challenge or risk facing your business in the foreseeable future? _____

Are there any significant opportunities you would like to pursue or plan to pursue in the foreseeable future, and if so, how do you plan to pursue them? _____

_ yes _ no *Would you like to schedule a one hour consultation about your business at no charge?*

_ yes _ no *What are the top four things you'd like to discuss, about your Self-Audit, or other business issues, during our meeting ?*

1. _____
2. _____
3. _____
4. _____

Please keep a copy of your completed self-audit form and mail a copy of the completed form to us at the address below.