

LAW

So, just how good is that corporate shield?

Almost every business is set up as a corporate entity. Why? Because a corporate entity provides executives a “corporate shield” from personal liability. This shield saves executives from liability for things that go wrong in a business.

But just how good is that shield? The answer is not what you would expect.

Most executives assume they are not personally liable for the wrongs of the company. They believe their corporate office protects them. They assume it will be the company, and not them, who takes the hit. However, that assumption can be very wrong.

First of all, we all are personally liable for our own acts or omissions that cause injury. If you run into someone while on company business, you will be liable for the damages. Likewise, if you intentionally engage in a business fraud, you will be responsible for the harmful consequences. No corporate shield can protect you from your negligence or willful act.

But that’s not the end of the story. If you control the affairs of the company, you can also be held personally liable for what someone else does. This arises from your authority to control. For example, if you fail to properly instruct



Tom Keuler

an employee who works under you, you could be held liable for any harm caused by that employee’s negligence. The same result would apply if you hire someone unqualified for a job or someone who has a shady history. You can even be held liable when an employee fails to follow policies and procedures that you designed to avoid liability.

Such extended liability is based on the “universal duty of care” standard,

which means everyone owes everybody else a duty to act carefully. This rule applies to everybody, even executives. No matter who you are, or what you do, or why you do it — you must act carefully. No one is exempted.

So what does this all mean to the executive? Simply stated, the executive must exercise “reasonable care” in managing the affairs of the company or suffer the consequences. This applies to all aspects of a business operation: hiring, training, instructing, supervising and firing. If an executive fails to exercise reasonable care, he or she is at personal risk.

Here are some tips to avoid personal liability:

- Do a thorough background check on each applicant you employ. Avoid employing people who have a history of being untrustworthy or careless.

- Hire applicants who are well qualified for the job. If they are not qualified, make sure they get qualified.

- Provide clear and meaningful instructions to employees. Make sure they understand those instructions and carry them out.

- Provide continual supervision to ensure employees are doing their jobs

correctly. If you delegate this responsibility, make sure you delegate to someone who is qualified and trustworthy.

- Adopt and enforce written policies and procedures that direct employees in the performance of their jobs.

- Conduct periodic employee sessions to review policies and procedures. Make sure employees understand what they mean and what happens if they are not followed.

- Take immediate disciplinary action against any employee who fails to comply. In the event of a serious infraction, terminate the worker.

- Above all else, make sure the company has plenty of insurance that covers you. The more, the better. When all is said and done, this is the very best protection you can have. It’s the only thing that will keep the wolf away from your door.

Tom Keuler has been a partner in Paducah’s Denton & Keuler law firm for more than 30 years. He represents many of the firm’s commercial, industrial and banking clients, and has been special counsel to the City of Paducah and counsel to the Municipal Commission in Frankfort.

TAX RECORDS

When in doubt, hold onto your paperwork — You might need it

How long must you hold onto records in case of a tax audit or similar concern down the road? While there are few hard-and-fast rules, the Kentucky Society of CPAs gives these guidelines:

Tax returns

Keep them at least 10 years because they contain valuable information you might need in the future, including a record of past income, deductions or taxes paid. Supporting documents, such as cancelled checks and receipts, may also come in handy. Technically, the Internal Revenue Service may challenge your individual tax

return up to three years after filing (longer with suspected tax fraud or intentional underreporting of income). Lenders may also ask for some earlier returns when you apply for a loan.

Retirement plan records

There’s no requirement to keep retirement plan statements or records of contributions to IRAs, but they show what you’ve saved and can expect to receive when you retire or close the account. Toss quarterly summaries once you get annual statements, if they are correct. Records also show you pay taxes on a nondeductible con-

tribution to your IRA account, so you don’t have to pay them later when you withdraw the money. Report such contributions on Form 8606 with your tax return and keep copies to track of your total basis.

Receipts

Toss ATM and credit card receipts once you receive your account statement showing the transaction. For insurance purposes, keep receipts, credit card statements or images of canceled checks for any big-ticket items, such as jewelry, electronics, appliances or cars. You may be able to lower capital gains taxes on a home sale if you still

have receipts of improvements made.

Protect privacy

A low-cost shredder can thwart identity thieves searching through trash bags for Social Security or bank account numbers. Or simply tear up your documents carefully, destroying sections with sensitive account information or other identification. Store all sensitive documents in a safe deposit box or fireproof home safe.

Dollars and Sense is a column from the Kentucky Society of CPAs. For a referral to a CPA in your area, go to kycpa.org.