



By Robert Goff

### **Does your corporation really limit your liability?**

Most entrepreneurs are aware that the primary advantage of forming a corporation is the limited liability afforded to its shareholders.

Generally, shareholders are not liable for the debts and liabilities of the corporation. However, that does not mean that corporate shareholders do not face any potential liability.

First, corporate shareholders are still responsible for their own actions. A delivery truck driver is no less responsible for the damages caused by his negligent driving because he has incorporated his business and is driving his truck as his corporation's president than if he had not incorporated his business and owned his truck in his individual name. A corporation only acts through its agents. While a corporation is responsible for the acts of its agent, the agent is also responsible for his own acts. He is not relieved of responsibility simply because he was serving on behalf of the corporation.

Second, shareholders in small corporations often expose themselves to extensive contractual liability by signing agreements in their personal capacity. Corporation shareholders often sign personal guaranties of their corporation's debt. Usually, such guaranties are required to obtain necessary financing and are simply unavoidable. However, unless a personal guaranty is required or requested, an officer or director of a corporation should always make sure that it is clear that he is signing in his capacity as a representative of a corporation not his personal capacity. This is usually accomplished by including the officer or director's title and the name of the corporation he represents before or after his signature.

Third, shareholders can forfeit the limited liability shield by abusing the corporate form. A corporation is a legal entity separate and apart from its shareholders. However, shareholders in many small corporations don't treat the corporation as a separate legal entity. In such case, courts are willing to discard the general rule of limiting shareholder liability to the corporation's capital and will allow creditors to look to the shareholders' personal assets. Shareholders should consider the following pointers to help them to avoid abusing the corporate form and the resulting loss of the limited liability shield:

1. Keep accurate corporate books and records.
2. Conduct annual shareholder and director meetings and record annual shareholder and director meeting minutes in the corporate book.
3. Accurately and completely record minutes of all corporate meetings.
4. Comply with notice requirements for corporate meetings
5. Call meetings and record minutes regarding changes in corporate offices, officers and directors.
6. Call meetings to make all important corporate decisions.
7. Accurately record all stock issuance in the corporate minutes.
8. Accurately record all stock transfers in the stock transfer ledger.
9. Don't commingle personal funds with corporate funds.
10. Don't distribute money to the shareholders when the distribution will leave the corporation insolvent or unable to pay its bills as they become due.
11. Don't use corporate funds for the benefit of individual shareholders.
12. Don't take advantage of business opportunities that properly belong to the corporation without first offering the opportunity to the corporation.
13. Don't neglect to file annual reports when due.

**Robert Goff** is an associate with Paducah's **Denton & Keuler** law firm. His areas of practice include estate planning wills, trusts, estates and probate, contracts, business corporations and partnerships, and elder law. He is admitted to practice in Kentucky and Tennessee and expects to be admitted in Illinois in May. He can be contacted at 270-443-8253.

Printed in Four Rivers Business Journal (Paducah Sun), January 2011.