

Loss of Corporate Protection

In today's litigious society, many people seek to "pierce the corporate veil" to establish personal liability on its owners, notwithstanding the legal entity formed to provide this protection. Below is a laundry list of what types of problems allow a potential creditor to hold owners personally responsible. As a business owner this list should be reviewed regularly to ensure you are not leaving a door open to an unwanted creditor.

- 1). Failure to observe corporate formalities, such as:
 - a) Failure to hold meetings;
 - b) Failure to keep the property in the name of the corporation;
 - c) Failure to sign as the correct officer of the corporation;
 - d) Failure to have corporate authorizations, ratifications, and resolutions for transactions;
 - e) Failure to have regular Board of Directors meetings;
 - f) Failure to have regular shareholders meetings;
 - g) Failure to have annual shareholders meetings;
 - h) Failure to issue the corporate stock, or maintain the stockholder's ledger;
 - I) Failure to maintain up-to-date corporate records, resolutions and ratifications;
 - j) Failure to have the required initial organizational meeting;
 - k) Failure to adopt corporate by-laws;
 - l) Failure to maintain proper accounting records;
 - m) Failure to advertise and serve notice that the business is operating as a corporation and is no longer a sole proprietorship, partnership or other entity;
 - n) Failure to transfer assets into the corporation and capitalize it properly;
 - o) Failure to get proper state and local business licenses in the name of the corporation;
 - p) Failure to transfer assets, property, records, etc. into the name of the corporation; and/or
 - q) Failure to file state and federal report forms;

- 2). Non-payment of dividends;
- 3). Insolvency of a debtor-corporation at the time of transfer;
- 4). Siphoning corporate funds by a dominant stockholder;
- 5). Non-functioning of the other officers or directors;
- 6). Absence of corporate records;
- 7). The use of the same business or office location by the corporation and its individual stockholders;
- 8). The fact that the corporate is merely a facade for the operations of the dominant stockholder;
- 9). Giving improper guarantees for, or on behalf of, the corporation;
- 10). Sale of a controlling interest for less than fair market value;
- 11). Profiting from inside the corporation;
- 12). Short swing profits;
- 13). Failure to disclose material facts, transactions for the companies in which the officers or directors have conflicts of interest and benefit from;
- 14). Violating the articles or by-laws of the corporation;
- 15). Failure to file or report corporate taxes;
- 16). Failure to register the corporation in other states;
- 17). Loans to officers or directors or stockholders that benefit the individual to the detriment of the corporation, causing the corporation to incur unnecessary expenses, liabilities, or tax liabilities;
- 18). Excessive compensation or dividend payments.

Though in many areas the topics in this list are broad, we hope the above summary will assist you with a starting place to evaluate your company. Of course, how to meet the state requirements to ensure you receive the full advantage of operating and tax benefits and limiting personal liability, can be very complicated. Should you have any questions, please feel free to consult further with us to determine how best to remain in compliance. We look forward to answering your questions.