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TO PIERCE OR NOT TO PIERCE?

The Corporate Veil That Is

By Danette L.R. Lilja

Nope, I am not talking about body parts, although *piercing the corporate veil* will also leave a mark. When I say piercing, I mean losing the legal protection you thought was in place when you set up your corporation or limited liability entity. Ouch – now that smarts.

Actually, it is more accurate to say, "now that dumbs." It "dumbs" because losing the protection of the corporate veil is always the result of "dumb" decision making (or more PC – less than smart decision making) on the business owner's, shareholder's, director's, officer's (your) behalf. Let's see if any of the following sounds familiar.

1. Forming a corporate or limited liability entity in Colorado is relatively simple, right? I mean come on; all you have to do is go to your CPA (unauthorized practice of the law) or banker (unauthorized practice of the law). Or better yet, do it yourself online (no comment). Really? Do you go to the dentist for a yearly glaucoma test? Or, perform your own annual exam?

2. Registering with the Colorado Secretary of State is the legal equivalent of forming a corporation or limited liability entity. Ummm…nope. The Colorado Secretary of State maintains a repository of documents. The documents required by statute to operate a legal entity in the state are meant to put creditors, third-parties, and the general public on notice; tell the world what you are doing, so they can make an informed decision about working with you. Filing is only the *first step*. Got the rest of your standard agreements and legally required documents in place? Keeping annual minutes? Keeping adequate business records? Adhering to record retention requirements?

3. Initial contributions, also known as capital contributions, are meager. How many legitimate businesses start with a couple hundred dollars in capital? Better yet, how many corporations issue penny stocks? I mean on purpose? Legitimate business entities are adequately funded from the start; otherwise, it is a hobby.

4. Let me get the check – the company is buying. Audits aren't just for the IRS anymore. Opposing counsel will request a copy of your financial records and accounts to see how you've been spending the coffers. Commingling funds? Using corporate assets and moneys for non-corporate purposes? Writing off a few vacations?

Alrighty, time to wind it up – I am over my word count limit. But know that I have only covered five (I combined two factors in number 4) of the eight factors in the first part of a three-part test that Colorado courts consider when determining whether a legal entity should be set aside and personal assets attached. That is legalese for losing your home, retirement, etc. Here's my (not sanctioned by anyone) common-sense test to determine if you are at risk: does your entity look, small, taste, sound, and feel like a business? If not, see a competent attorney sooner rather than later. We can help you BEFORE an issue arises, but not after. It is much, much, much less expensive and time consuming to stay out of trouble then get out of trouble. It's called preventative law, and I highly recommend it.

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