

Annual Review of Legal Documents

12.3.15

RELATED ATTORNEYS

Bruce J. Ackerman

Meadowlands USA Newsletter

Everyone is attuned to addressing year-end tax and financial planning. However, most businesses do not give proper attention to reviewing their legal documents and the types of legal issues that should be looked at on an annual basis.

RELATED PRACTICE AREAS

Corporate & Business Law

A yearly legal review should be a regular part of your company business planning. Even more importantly, by making the review of legal documents an annual concern you can often prevent legal issues from causing greater problems later on.

The following are some common areas that should be part of your annual legal business review.

Ownership & business entity documents

Take note of having your entity documents in order. If your business is a corporation, this should be a shareholder agreement, sometimes called your buy-sell agreement, and for a limited liability company you should have an updated, fully signed operating agreement. At least once a year, the company should be sure that these documents memorialize any changes in ownership and agreements between owners for future transfers.

Some of the issues to confirm in these documents include:

- Transfers of ownership that are permitted and prohibited.
- Transfers upon disability or death and the handling of the purchase of that ownership interest.
- Employment of owners (particularly minority owners) and what happens upon termination or retirement.
- Tax agreements on pass through income, confidentiality and restrictive covenant agreements.

Additional considerations include agreements upon management authority (either by an agreed upon board of directors of a corporation or managers for an LLC), voting requirements for routine management decisions and if a heightened vote is required for major decisions.

Finally, the annual legal evaluation should take note of updated valuations of the company that may be required by buy-sell agreements or similar agreements by the owners and any additional insurance required to fund a buyout.

Other key documents to consider

The following areas should be reviewed at least annually and updated as needed:

- **Minutes:** Company records should reflect all shareholder and board of directors meetings for corporations and member/manager meetings for LLCs. These minutes should document all major business activities during the year and, if not already in place, formally authorize the actions taken for each major transaction.
- **Owner, officer and other key personnel transactions:** Company records should carefully document the dates and amounts of distributions made during the past year, as well as the total compensation for each owner, officer, and each key player in the company. If the company has made any loans to an owner, officer or key employee, the terms and conditions of all loans should be documented, to include both minutes and promissory notes evidencing each loan.
- **Banking and financing:** Review all company loans, usually with institutional lenders, and assemble the documents and minutes detailing the terms and authorizations to sign and borrow. Review business records and confirm that your minutes detail actions taken as to bank accounts and lines of credit.
- **Leases:** Review business records for all leases. The general details should be disclosed in the minutes, including a summary of the parties, the rent, the term and the leased property. Take note of all triggering dates for options to renew or to terminate and the advance notices required.
- **Employees:** Review so that all employment agreements desired to be in writing are documented—and that all confidentiality and non-competition agreements are in place. All employees having *at will* arrangements should sign a statement to that effect. If there are any significant changes to employment benefits, including pension or profit-sharing plans, these should be detailed in minutes.
- **Contracts:** Review all current contracts and note those that end during the coming year, whether there are options to extend and or rights to cancel. Note all calendar deadlines and special terms and conditions.
- **Employment policies:** Review employee manuals and benefits and update based upon legal trends and internal issues. Be certain that all employees receive copies and the receipt by the staff is documented.

- **Tax planning:** Review potential tax planning and tax issues with the company tax professionals. Go over upcoming transactions and the tax impacts—consider individual tax planning for the owners in relation to any proposed business transactions.
- **Information governance:** Every company should review and secure its management of information. Consider data security issues, review policies and determine how to best secure all data at the points of use and storage to minimize the likelihood of any system or data breach. Review insurance coverages in regard to computer systems and data breaches.

Use the year-end or start of the new calendar year as an opportunity to take a fresh look at your legal documents and to bring them all up to date.

Article link: <http://meadowlandsusa.com/2015/12/03/annual-review-of-legal-documents/>.