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Fall 2009

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WELCOME

Richardson & Tyler, LLP is pleased to bring you the fall edition of our 2009 newsletter. This newsletter is to share new matters of general interest with our clients. It is not intended to provide legal advice. Please speak to an attorney before applying this information to your specific situation. If you would prefer to be taken off of our mailing list, please call or e-mail richardsonandtyler@rtlegal.com and let us know.

CORPORATE DOMESTICATION

A corporation must be authorized to perform services in each state that it does business. Corporations that are organized under the laws of Massachusetts must be authorized as a “foreign” corporation to perform services in any state outside the Commonwealth.

But what about a business that is organized under a different state but does business in Massachusetts? Rather than obtain authorization as a “foreign” corporation to do business in Massachusetts, it may save time and expense to transfer registration to Massachusetts and become a “domestic” corporation.

“Domestication” of a corporation may reduce the business’s taxes and annual filing fees. Contact Lauren Killman if you’d like to discuss whether domestication would be beneficial to your business.

MECHANIC’S LIEN

If you did the work, or provided the materials, you should be paid.

Builders, architects, engineers, landscapers, plumbers & others provide valuable goods & services – but are often not paid.

They can have the same leverage as a mortgage lender!

How? Establish a “*mechanic’s lien*”!

If you contract to improve real estate, you can file a *Notice of Contract* at the Registry of Deeds. As work progresses, it may become necessary to file a *Notice of Termination*, or a *Notice of Substantial Completion*.

Filing requirements are technical, and time deadlines are important. However, if you “dot your I’s and cross your T’s,” you will have a lien on your customer’s real estate that is as valid and enforceable as your customer’s mortgage lender.

This area of the law is technical and complex. In these shaky economic times, we suggest you consult with counsel early and often, to protect your right to collect payment for your hard earned services and your valuable goods.

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If there is a particular topic you would like to see in our newsletter please email us at richardsonandtyler@rtlegal.com

BEYOND ESTATE PLANNING.*Have you heard about a directive?*

Planners speak of wills, trusts, special needs trusts, health care proxies, living wills, living trusts, homesteads, cross purchase agreements, marital trusts, elder planning, etc, etc, etc.

Your estate plan, business succession plan, and life plan may include many such *legally binding documents*.

A *directive* is *not legally binding*, but may still be *more important* to your family and loved ones. For example:

- A legally binding *health care proxy* appoints someone to make medical decisions for you – a *directive* gives that person informal guidance on specifically what treatment you want or don't want, avoiding unnecessary costs for lawyers and guardianship proceedings.
- A legally binding *bequest* in your will leaves a specific item, such as your wedding ring, to a loved one – a *directive* gives your executor informal guidance on how to distribute all your personal property among family members, avoiding excessive probate costs.
- A legally binding will can provide specific directions regarding burial, cremation, etc. – a *directive* will guide your family on these decisions in the hours and days after death, as opposed to a will that may not become effective until months later.
- In a will, you may leave a pet to a certain person who will care for it, but a *directive* provides guidance to that person, as to your concerns and that pet's special needs.

What do we recommend? Discuss your concerns with your trusted legal advisor – some can be met with a legally binding document – some may be better met with a less expensive directive.

CORPORATIONS, LIMITED LIABILITY COMPANIES, BUSINESS FORMATION, MERGER & ACQUISITION

A question arises in formation of new businesses, mergers & acquisitions, and even for existing companies: “*What is the best type of company for my business?*”

The bewildering array of options includes: limited liability company, s-corporation, c-corporation, partnership, proprietorship, limited liability partnership, limited partnership, joint venture, trust, business trust, and a host of others.

Another question – should I incorporate in Massachusetts, Delaware, or somewhere else??

The Answer?? “*A good company is like a good suit of clothes*”. It should meet the needs of the person who lives with it, day in and day out.

Are you “going public” or taking in outside investors? Delaware law is familiar to those investors. Consider incorporating there.

What is the difference between an S-Corporation and a Limited Liability Company? LLC's seem “fashionable” at the moment, but both are almost identical for most purposes. The S-Corporation is simple and reliable if you have a small group of “equal” owner/operators. However, the LLC is more flexible, if you have a small group of investors, owners and operators, each with different roles and expectations about the company.

What is more cost effective? You can save some recurring filing fees & charges if you put real estate in a trust.

Concerned about personal liability? An LLC or corporation may afford more protection than a trust.

Bottom Line? Tell us your goals, expectations, concerns & worries.... Then, we'll suggest which vehicle will best suit your needs.