Living and Learning Liability Lessons

How a lawyer with an M.B.A. caught a break to keep from going broke

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STEVE THAYER STUDIED FOR an M.B.A. while attending law school, but that didn't stop him from making some common business mistakes when he first opened his law practice.

Thayer, who started as a solo, is now a partner at Chicago's 21-lawyer Handler, Thayer and Duggan. However, he says, when he started he failed to follow his own advice —ideas gleaned from months of research for his M.B.A. thesis on developing a corporate strategy for a law firm.

For example, he didn't choose his first office space based on location—the golden rule of real estate—but rather solely on price.

He didn't create a separate limited liability company to be the leaseholder of the space, thus guarding his separate law practice should the lease be broken. Nor did he fully separate his personal assets, such as the art he used for decorating, from those of his firm to protect them from firm creditors.

Thayer was lucky, though: He was not sued for malpractice and did not face any other potentially devastating action those first few months. Any such lawsuit would have eaten its way straight through to his equity, and he might have ended up bankrupt.

"In law school, we're taught to think of a law practice as a very personal thing," says Thayer. "It's about the lawyer and his skills. But a law practice is a business, and it should be treated as a business in many respects."

Now, Thayer not only does all of the things he should have done from the start, he also advises other law firms and small businesses about limiting personal liability.

He advises small firms, even solo practices, to create a separate limited liability company to be the leaseholder on any rented office space. That way, if the firm must break the lease—which likely is the firm's biggest liability—the LLC is on the hook, not the practice itself. The separate law firm may then make good on its other, smaller liabilities before closing.

Steve Thayer: Separate your assets from the firm's assets.

"Bankrupting a law practice, as opposed to simply closing the doors, is much more potentially dangerous for the lawyer's law license," he says. "It's seen as irresponsible for the practice to leave all of its creditors, including clients, high and dry."

ART OF NEGOTIATION

THAYER ADVISES THAT CERTAIN aspects of commercial leases are generally negotiable, and lawyers, representing their LLCs, should consider haggling.

For example, Thayer says, the amount of the security deposit may be negotiable. Alternatively, the landlord may agree to accept a letter of credit in lieu of a cash payment, preserving the cash on the firm's balance sheet. Letters of credit or other devices such as a bond should also be used whenever possible in lieu of the firm members' personal guaranty of the lease, he says.

"Try wherever possible to keep your personal assets and the firm's assets completely independent," he says.

Similarly, Thayer says, law firms should have clear, written agreements about the ownership of assets such as decorative artwork, personal electronics and other valuables. A lawyer who wishes to bring personal items into the workplace should create a written agreement with the law firm that the items belong to the individual, not the firm. Then, if the firm is ever hit with a large judgment, lawyers don't have to watch their personal belongings being hauled off to auction along with the firm's assets.

"Don't 'contribute' to the landlord. A simple written agreement that shows the firm as leasing your personal assets from you can go a long way, provided you properly purchased the item with your own money."

The key is to take care with liability before opening a practice, says Thayer. "There's nothing like making a mistake yourself to etch it in your brain." ■

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