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If you run a business on handshakes rather than fine print, it's time to retool your policy in the New Year. In any economy, written procedure, and well-defined contracts are critical to conducting "safe" business.

When cash is tight, contract verbiage becomes a map with hidden treasure. People "find" money in loopholes and litigious interpretations, tripwires for lawsuits. Meanwhile, swift terminations under stressful circumstances can open a dam of legal trouble. How protected are your trade secrets, and what's stopping disgruntled former employees from launching competing ventures?

"In this economy, business owners are busy selling their products and services and making sure they are getting paid," says Sharon Toerek, an attorney with Licata & Toerek in Independence. "They are short on time and cash to pay advisers to help them put the proper legal tools in place."

Kris Putnam-Walkerly, president of Putnam Community Investment Consulting in Westlake, was thankful she updated her subcontractor agreements last year when a client tried to hire one of her independent associates rather than renewing with Putnam.

Meanwhile, Allen Crowley, president of the construction firm Crowley Group, regrets moving forward with building projects without getting a big client's signature. Fearful of losing future business with a player he worked hard to secure, he let the paperwork slide. Now, the client owes Crowley \$4 million, forcing the Crowley Group to reduce

by Kristen Hampshire

staff from 18 to three people and reinvent its business. The good news: Crowley is tapping other markets and is excited about the plans. The bad news: "Every day would be better if we could collect that \$4 million debt."

Crowley's reason for not pressuring the client when contracts piled up without being returned and signed: "They were dangling six other projects in front of us at the time," he says, conceding that "it's not a handshake world anymore."

That said, now is the time to take a legal audit of your business and put in place the proper infrastructure, if you haven't already. That includes: employment policies, buy-sell agreements, intellectual property protection and corporate records.

The Contract is Law

"If someone won't put something in writing, you don't want to do business with them, and that becomes even more important these days," says James Roosa, president of Roosa Co. LPA in Cleveland.

Take Crowley's situation. He never anticipated that a heavy-hitter client would dupe him out of millions. Crowley didn't want to be the pesky contractor, and even though the agreement he and his client agreed on mandated a written amendment for change orders to the project, the client's bank would also have to approve the change order, making the process onerous, so Crowley agreed to go ahead

with \$300,000 in extra work without getting it on paper.

Then we began to work on a handshake basis on several other projects," Crowley says, noting that the client received contracts but never signed them. Not wanting the project to get off schedule, Crowley continued pushing forward with construction. He completed those three projects, but never got paid. National retailers that moved into the buildings—Office Max and Walgreens among them—applauded the attractive facilities. That didn't matter. "The problem is the ripple effect," Crowley says. "That \$4 million owed to us is not all profit. We have to pay painters, plumbers and other subcontractors."

Crowley filed liens on these projects, and he'll have no choice but to pursue legal action, though he doesn't expect to collect much after paying attorney's fees. "My staff kept telling me these guys were crooks, but I was too emotionally wrapped up in the event, and it was my job to acquire the work," he says. "It was frustrating to think this client wasn't honest."

Toerek's guideline for businesses: "Every transaction is a contract." That means e-mails where you propose a sale and the client agrees. "There could be contractual provisions in that e-mail," she says. The problem, of course, is when businesses conduct transactions without a contract, or do not read the contract before entering a relationship.

"As long as the cash is flowing, some business owners do not take time to put their legal framework in place and then when times get slower, their efforts are reactionary," Toerek notes. "They have to rely on contracts to get paid more quickly."

Roosa relates to business owners who do not want to force a 50-page contract littered with terms and conditions to trusted clients. "But you must spell out how you will buy, when you will buy, how you will pay," he emphasizes. Whether that occurs in an e-mail message, through a purchase order or a formal document, get the commitment. "Financial pressures will motivate people to hold others to the letter of a contract much more than in good times," he adds.

Take Action:

Develop a standard contract and customize it as needed.

Some ways to present terms and conditions to clients include: posting them on your Web site with a click-through arrangement that requires customers to "agree" electronically; print them on your purchase orders and other signed sales agreements; present them in hard copy and require a signature.

Read and re-read all contracts. Enlist an attorney who specializes in contracts to help you decipher contracts if you don't have or want to spend the time reviewing them. "I tell people I'm a paid skeptic," Roosa remarks. "If you don't have the stomach to slug through the fine print, have a lawyer do it and highlight potential problems."

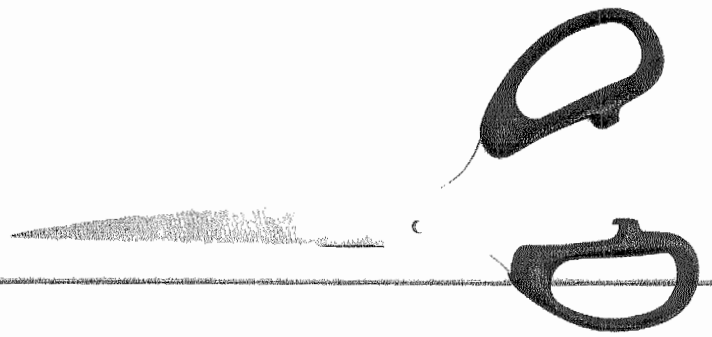
Terminate with Care

Emotions are running high.

Employees are stressed about their personal financial situations, and business owners are desperate to cut expenses so their companies can weather the storm.

If you're running your business as a sole proprietor, your personal assets are at risk if business goes bad. "You don't want someone coming after your house, your kids' college funds or your retirement money if your business runs into hard times," says Sharon Toerek of Licata & Toerek.

During tough economic times, that handy corporate umbrella may shield you from a storm in case of a lawsuit, collections issues or any number of business disasters. Discuss with your attorney the advantages of incorporating or forming a limited-liability corporation (LLC).



Small businesses can react quickly to market shifts, which can be a plus. But not when layoffs are concerned.

"There is haste to remove people off payroll, which is the main driver of terminations in a down economy," Roosa says. "The danger is that employers may not follow their own termination procedures—they may forget to offer mandated post-employment benefits."

Or, businesses may not have termination procedures at all. That's a big problem for several reasons. One, employees' reactions to a layoff can result in legal action. They can blame employers for discrimination, wrongful termination, the list goes on. Or, they can take a company's intellectual property and run with it, if proper documents were not put in place (see Protect your I.P.).

If the reason for termination is purely economic, say so. "That may go a long way toward preventing an employee from thinking the layoff is a conspiracy," Roosa notes.

Toerek agrees. "Be straight with people," she says. Explain the reason for reduction in force and explain post-employment pay as written in the company procedures manual. Ideally, consult with an attorney prior to terminating workers to be sure your "speech" includes appropriate language and mention of applicable programs, such as COBRA for health insurance.

Take Action:

While Ohio is an at-will employment state, meaning boss or worker can terminate the relationship at any time for no reason, there are rules employers must follow to avoid legal action. First, polish off that company procedures manual, update it and be sure a termination policy is clearly outlined. Ask employees to sign a contract stating they read, understand and agree to the company's policies.

in•fra•struc•ture n 1. An underlying base or foundation especially for an organization or a system



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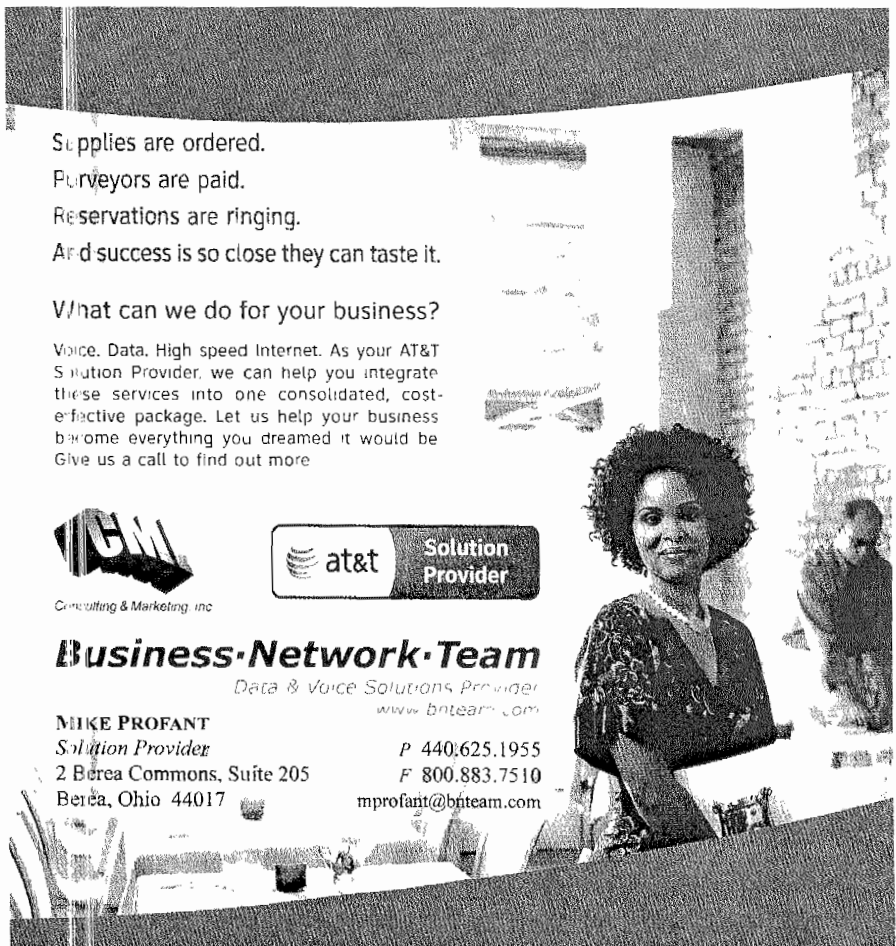


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Re-introduce the company non-compete, non-solicitation and confidentiality agreements. Even though employees signed these contracts upon being hired, refresh their memory so they understand your workplace will not tolerate unethical behavior.

Keep careful records. Employment procedure documents should outline policies for attendance, vacation, performance, termination and other human resources issues. One of the biggest mistakes companies make when terminating employees is not abiding their own “laws.” Revisit policies before making hasty terminations.

Update Corporate Records

This is your company playbook. It documents who the company officers are, who has authority to conduct business on behalf of the company: who can sign contracts, borrow money and make capital purchases. This book should also contain closed-corporation agreements, which allow a company to dispute formalities like holding annual meetings or appointing a board. Perhaps most important in this economy is a buy-sell agreement. What will happen to the business if you or a partner can no longer participate in the business (illness, personal financial issues, death, divorce)? A buy-sell agreement lays out the exit strategy and succession plan for shareholders.

“The business climate is risky these days; the majority of small businesses fail eventually—that is the statistical truth,”

Roosa says. “Having an agreement among co-owners is critical to avoid unintended consequences should the business tank.”

The buy-sell agreement is essentially a business pre-nup. The topic is never easy to breach—you don’t want to discuss divorce before marriage, or a business break up before incorporating. Even so, “assume the worst,” Roosa says.

Take Action:

Document company officers and their responsibilities.

Include major capital expenditures and business transactions in corporate records.

Design a buy-sell agreement, if you do not have one in place already. Otherwise, review it annually and update as necessary.

Protect Your I.P.

What your employees know could hurt you—if they leave your business and you do not have these three legs of business protection in place: confidentiality, non-compete and non-solicitation agreements. Ideally, employees should sign these contracts upon being hired.

But since the Ohio Supreme Court determined that continued employment is “sufficient consideration” for a non-compete agreement, you can ask employees to sign a contract without having to offer additional compensation or other concessions.

If you are terminating an employee and do not have these agreements in place, you can negotiate some restrictive cov-

enants, Toerek says. For instance, offering additional severance pay or an extension of benefits under the condition that the employee does not work for a competitor. “But courts are not big fans of doing this as you usher an employee out the door,” she adds.

Don’t count on an upset employee to comply with your request. Put business protection agreements into play on workers’ day one.

Having non-compete and non-solicitation agreements can preserve client relationships, as Putnam-Walkerly learned. “The situation was nipped in the bud because my subcontractor signed a non-compete and understood that he could not work as a consultant or employee for any of our clients for two years following any project without my express permission,” she says.

Explicit subcontractor agreements prevent Putnam-Walkerly from wondering if subcontractors are using her as an “in” to clinch side business. She goes one step further by specifying how subcontractors should communicate with clients, because many times her independent associates work on clients’ sites as consultants and sometimes subs have more contact with the clients than she does.

These agreements are equally important for subcontractors, Putnam-Walkerly adds. “They want to know what they are entitled to, what is expected of them, and how and when they will be compensated,” she says.

Take Action:

Develop non-compete, non-solicitation and confidentiality agreements that employees sign upon being hired. If you do not have these in place, discuss a strategy with an attorney.

When terminating an employee, revisit business protection agreements and ask the worker to sign a statement reconfirming

his or her understanding of the contract.

If you don't have business protection agreements in place, design them now and ask employees to sign on the dotted line. While the contract will cover only information learned after the signature date, the agreement sets the tone for sound ethics. "It can have a deterrence effect on employees and send the message that the company wants to protect its information," Roosa says. "Employees may think twice before copying their customer list to a flash drive before they leave."

Don't Wait to Collect

Don't allow vendors and clients to use your business as the bank. "Be diligent with collecting receivables and

institutionalize a process so people don't get the impression that it's OK to string out payments," Roosa says.

The longer a client pushes off making good on an invoice, the less likely that customer is to pay it in full, especially in times when cash is tight. "I'm extending more collections action than I have in 20 years," Roosa notes.

The problem is, some customers simply pay on their own terms, and there's little you can do about it, says Roosa, pointing to certain Fortune 100s. "That's a reality of business, but for other clients, you can control your receivables flow," Roosa says.

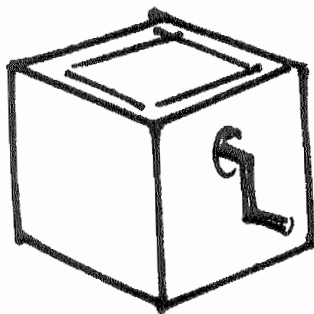
If your terms are "30 days net," then cut off clients who push the limit to 45 days, Roosa suggests. "Do not let receivables get

to the point where they are 90 days out."

Agree on terms and fee schedule for subcontractors in advance. "That has come in handy when a subcontractor took her own initiative to do extra work on a project above and beyond what we agreed to," Putnam-Walkerly says. "I was able to turn to my agreement and say, 'I didn't ask you to do that. We agreed to this.'"

Review vendor agreements and examine the fine print. Think twice about accepting personal guarantees, and do your homework before signing an agreement with these terms. "Do an analysis of the property [if the personal guarantee includes a mortgage] and find out what liens are attached to it already," Roosa advises. ●

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