

Legal

Protect Your Assets

by Quenda Behler Story

Whenever I speak somewhere, I preach about the importance of separating your personal assets from your company's assets. The best way to do this is by incorporating your business as a corporation or an LLC.

Incorporating a business creates a fictional legal "person" — the corporation — that you work for as an employee. As long as this fictional legal person remains alive — and it does remain alive even if its founder and owner do not — the corporation's debts are owed by the corporation, not by the person who started the company, not by the people who own it now, and not by the people who will inherit it later on. The corporation can be successfully sued, but the owners cannot.

I bet I've said that a million times, but apparently not even my friends listen to me. Last week I got a frantic phone call from an old friend whose husband owned a

concrete company. Just before his recent death, he made a mistake — a serious mistake — mixing the concrete for a foundation. The customer said he intended to sue. When my friend told him her husband had died, the customer said, "Fine, I'll sue you instead."

What Happens Now?

So what's the likely outcome of such a lawsuit? Is my friend on her way to the poorhouse?

It depends. If the concrete company is a corporation, it can be sued for bad work — but the people who own it can't. If the company is incorporated, such assets as my friend's home, vacation cottage, and personal bank accounts, as well as proceeds from her husband's insurance policies, will be safe; they won't have to be used to pay the company's debts.

Suppose you are in a similar situation. No one has



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died but you've made a terrible mistake on a construction job and are going to be sued. You should have incorporated, but you didn't. Is everything lost? Could you incorporate now?

Yes, you could incorporate now, and you probably should. After all, you might make another mistake tomorrow.

However, it's too late to protect your personal assets from being reached by this particular irate customer.

Is there anything else you can do?

What Won't Work

Let's talk first about what won't work. Transferring everything you own into your spouse's, mother's, or best friend's name won't work. Transferring title of assets is the traditional response to this problem — but I'm here to tell you that if you pursue this angle, you're wasting your time.

You think we lawyers never heard of that trick? We'll put you under oath and ask you about recent transfers, and we'll serve you with a subpoena that requires you to bring in all of your company's business records. If you don't answer truthfully or show us all the company's papers, you'll be committing perjury.

We ask about "recent" transfers in particular because recently transferred

property can be recaptured for the benefit of the creditor. A transfer that took place some time ago is much harder — sometimes even impossible — to reach. Exactly how hard depends on how removed from the company the person you transferred the assets to is.

The law varies from state to state, but in general a court that finds that you transferred assets to avoid paying a debt will consider that transfer fraudulent, and it may come after you *and* the person you transferred the assets to.

Going out of business won't work, either — not if your business isn't incorporated. The debts of a sole proprietorship or a partnership will survive and can be collected long after the company itself is gone.

What Might Work

Eventually, of course, the statute of limitations on debts and claims will cause the debt to become uncollectible. The idea is that debts shouldn't hang over a person's head forever, so state law puts a limit of a certain number of years on the life of a debt; still, in the meantime your life could get very difficult.

There are steps your lawyer could take to help you immediately. A Chapter 11 bankruptcy or reorganization would

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allow you to stay in business and would give you some debt relief. Or your lawyer may be able to negotiate a payoff that's less than the full amount and persuade the creditor to take it on the theory that a bird in the hand is worth two in the bush.

As for my friend, it turned out that her husband's company was not incorporated. How much trouble she's going to have with this debt hinges on how involved she was with the company. She needs a lawyer immediately — and a psychic who could contact her late husband and tell him what a fool he was for not getting his company incorporated while he had the chance.

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