



10 WAYS YOUR ATTORNEY CAN HELP YOUR BUSINESS SUCCEED

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You are a business owner. You are busy. You have to worry about your customers, products, marketing, employees . . . the list goes on. You shouldn't have to worry about your attorney. And yet, I hear from many business owners that dealing with their attorney is a source of stress and frustration. It doesn't have to be that way.

Attorneys can and should be making the lives of their business clients easier, not more difficult.

In the following, I'm happy to share with you 10 ways an attorney can help your business thrive. If you are not receiving these benefits from your relationship with your attorney, you deserve better.



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If your calls and emails are not acknowledged within a few hours, or at least by the next day, you need to find a new attorney.

1. YOUR ATTORNEY IS EASILY ACCESSIBLE

If you've ever sent a frantic email to your attorney, or left her a voicemail, only to wait days for a response, then you have a dysfunctional relationship with your attorney. Clients don't reach out to attorneys out of nowhere. They call with issues that need addressing, and not hearing back from their attorney only adds to their anxiety.

The person who should be setting you at ease and alleviating your legal issues should not be causing you more stress and frustration. Clients should not be put in the position of badgering their attorneys for information, and they should not experience stress in simply making contact with their legal advisor.

Instead, communication should come willingly and liberally from your attorney. That communication should be of a high quality, meaning that it's prompt, informed, and proactive. Let's break that down.

PROMPT

Your attorney should be responding to your emails and messages within hours, not days. If they cannot answer your question right away, or they get your message at a time when they can't deal with it immediately, they should give you some expectation of when they will be able to address it.

INFORMED

Your attorney should be communicating with you regularly when matters are pending, and when new matters arise. Whether it's active litigation or a contract negotiation, your attorney should be providing you unprompted and fully informed status updates regarding your file.

PROACTIVE

When you do not have an active matter, your attorney should still be reaching out to you periodically, informing you of business or networking opportunities, letting you know about changes in the law relevant to your business, or offering useful introductions.



2. YOUR ATTORNEY CAN KEEP YOUR “HOUSE” IN ORDER

You could say that a clean and tidy house is the foundation for a successful home life. When everything is in order, things operate more smoothly. Likewise, your business should be in order as well. What does this mean? Every company should have certain vital documents in place to steer it in the right direction, avoid legal pitfalls, and guide it through disputes. Most importantly, they are necessary to establish the corporate veil that protects owners from being exposed to personal liability.

Despite the critical benefits of having these founding documents in place, in advising hundreds of businesses over the years, I consistently find that they are outdated, incomplete, missing, or never drafted in the first place. Besides a company’s Articles of Incorporation or Organization, which can easily be filed using forms from most state government websites, a closely held business should have the following:

OPERATING AGREEMENT OR BYLAWS. These documents are the rules by which the company operates. In a Limited Liability Company or LLC, an Operating Agreement indicates who the members (that is, the owners) are, the rules by which the company will be managed, capital contributions already made and to be made in the future, and how profits are to be distributed. Some may include provisions, for instance, preventing the sale of memberships to third parties, or laying out procedures to be used in resolving disputes between members. Putting these rules in place (or making sure they are updated) is important in the event the company ever gets sued, a partner dies, or partners decide they can no longer work with one another.

Likewise, in a corporation, bylaws set out the rules and regulations of the company. They provide guidance on the officers the company will maintain, the duties of each, voting mechanisms for the board of directors, and the rights of shareholders. How decision-making is conducted, including who must be present to make decisions, is also addressed in the bylaws. These provisions, too, become extremely important in the event of dispute, when the company is being sold, or when the company is trying to take major action such as acquiring another company or obtaining financing.

RECORDS OF OWNERSHIP AND TRANSFERS. Historically, keeping track of ownership and transfers of a company was done on a stock ledger. While many corporate entities still maintain one, with the advent of limited liability companies and the de-formalization of companies' organizational structures, records of ownership often slip through the cracks. Yes, in many closely held corporations it is very clear who owns what—but that issue can quickly get complicated when shareholders or owners pass away, when shareholders get divorced, or when employee shareholders leave their employment without giving up their shares. Transfers should be clearly documented through assignments and consent resolutions affirming the transactions that took place.

RECORDS OF LOANS. Often in a closely held company, the owners do anything they can to keep the company afloat during downturns, including loaning funds to the entity. It is important this be documented by Promissory Notes or other Loan Agreements, especially when one owner, member, or shareholder is making the financial commitment and expecting the company to repay them, but other members may not be aware of the expectation. Having your attorney record all financial transactions between the company and its owners keeps everyone on the same page, and through a negotiated schedule it is likely to result in faster repayment of loan to the shareholder!

Have all your corporate documents been updated in the last 3-5 years? If not, you might need a corporate cleanup.

[Click here to find out more.](#)

What is a Buy Sell Agreement?

[Click here to watch video.](#)

BUY AND SELL AGREEMENTS IN PLACE AND UPDATED.

Your attorney should recommend that your business have a buy and sell agreement in place and should assist you in drafting it. Sometimes referred to as a shareholder restriction agreement, this document prevents shares from being sold outside the control of a closely held company. It can also provide a mechanism to address how a company can live beyond the current generation, what happens when a key employee leaves the company or retires, or if there is an unexpected departure, disability or passing. Buy-sell agreements also address the value of the owner's interest in advance so that there is no dispute as to what the buyout price is at the time of departure. Having a buy and sell agreement in place can help your business operate through uncertainty and continue on for future generations.



3. YOUR ATTORNEY CAN REVIEW YOUR TRANSACTIONS **BEFORE** YOU ENTER INTO THEM

The best way to manage risk in your business is to know your rights under a contract before you sign it. One of the best ways to use your lawyer, meanwhile, is to have them review those contracts—even the ones that seem simple—before you enter them. You never know which contract will be the one to result in a dispute.

Have your attorney review these before you sign:

Letters of Intent. These are the foundation of purchase agreements and many other agreements. These do not have the same binding force as contracts, which can make it feel as if there's no need to get a lawyer involved. But it's often difficult to renegotiate terms at the next stage once agreed upon in the letter of intent.

Leases. Whether your business is the lessee or lessor, it should go without saying that having your lawyer take a close look at this agreement is necessary. A lease is one of the most important contracts a company enters into and making sure your interests are protected is a cornerstone to your success.

Don't overlook the
Letter of Intent

*Click here to
watch video.*

Read our blog on
"5 Things to Know
When Negotiating a
Lease"

Click here.

Service and Vendor Agreements. If your company enters into a lot of business-to-business agreements, then you are constantly running into issues involving their terms—from liquidated damages clauses to non-disclosure agreements to non-competition or non-solicitation provisions. These clauses can be written very heavy handedly to benefit one party over the other. Be sure to have your lawyer review your B2B agreements to make sure you are not on the losing end.

Purchase Agreements. Whether you are buying property, equipment, or some other asset, consult with your attorney before agreeing to the terms.

In order to maintain a successful business, you should have the best team possible to keep it running. Your attorney can and should be assisting you in making key decisions regarding your staff.

4. YOUR ATTORNEY CAN HELP YOU EMPLOY (AND KEEP) THE BEST TEAM FOR YOUR BUSINESS

EMPLOYEE HANDBOOK OR POLICIES

In the constantly changing employment landscape, employees find comfort in knowing what the rules are and what the company expects of them. Not only do employee handbooks serve employees in this way, but they also assist the company when it needs to enforce rules, including disciplining or terminating an employee. It also can serve as protection in defending employment litigation. Every company can benefit by having a carefully drafted handbook in place.

EMPLOYEE CONTRACTS

Your attorney should be assisting you in onboarding key employees by drafting employment contracts. Often, these contracts should cover more than just compensation and benefits. In many cases—particularly for companies in industries rich with trade secrets and competitive labor markets—it's advisable for them to include a confidentiality clause, non-compete and non-solicitation clauses, and remedies that benefit the company in the event the employee breaches any of them.

UNEMPLOYMENT CLAIMS

In Michigan, a company's unemployment rating is based on the number of unemployment claims made by former employees. Not all unemployment claims are legitimate. If the cost for unemployment insurance is important to your company, or if employees making claims were terminated for gross misconduct, or because they abandoned or quit their position, challenging these unemployment claims can be beneficial to your business.



PREVENTATIVE LAWYERING IN TERMINATIONS

Sometimes an employer needs to terminate an employee. An employer nearly always has a legitimate reason to do so, but it is not always evident to the employee or to a third party examining the issue. Before terminating an employee, consult with your lawyer to identify any risk in doing so and how to mitigate the risk of litigation in the future.

INCENTIVE PLANS

It's far more efficient to keep good employees than to constantly hire and train new ones. Your lawyer can assist you in drafting incentive plans that both motivate and retain your current workforce. By documenting rewards being offered to important team members, you will ensure both sides have a clear understanding of the incentives and the expectations around them.



Read more about employment issues.

Click here.

5. YOUR ATTORNEY CAN ESTABLISH YOUR "FORM" CONTRACTS

Whether your company is selling a product or service, your business inevitably needs form contracts. Consistency is key, even if each client or customer is different. In particular, the company should have consistent rights and remedies if a customer fails to pay or otherwise breaches the agreement. To avoid conflict in the future, and readily resolve it when it arises, the key is to have standard contracts in place that you and your counterparties can refer to.

One important form contract is the Master Services Agreement. This agreement, which will vary across industries, should describe the terms and conditions under which your company will do the work for which it is paid. The deliverables may be different but having a contract in place that you can easily complete for each new client or customer is key to running an efficient business. A well written Master Services Agreement (sometimes just called a Services Agreement) also positions your business to avoid liability and manage risk.

Your attorney should understand where your business is now and where it wants to go. She should be helping you think about the company's vision for the future and what you'll need to make it a reality. That assistance should include helping clients formulate a succession plan, and then helping them implement it.

6. YOUR ATTORNEY HELPS YOU PLAN FOR THE FUTURE

A good succession plan starts at the top. Your attorney can assist executive leaders in hiring talent and grooming them to assume their jobs, as well as deciding when it is appropriate to pass down the knowledge and wisdom of your business. If only one person knows the secret formula, it makes it very difficult to recover from a tragic situation. Your attorney should be providing advice on whether and when to look outside your organization for future leaders. Sometimes, the best person for a particular job may not be in your family tree, and the outside perspective of an attorney can help founders and CEOs wrestle with that sometimes-difficult question.

Your attorney can help review employees regularly, so they know where they stand and whether they are part of the company's vision for the future. Once you and your attorney develop a plan, put it in writing through a buy and sell agreement, estate plan, or other legal document that outlines the wishes of the executive team. A solid succession plan is not a "set it and forget it" document, but one that is continually revisited and nurtured.

If your succession plan consists of selling your business, your attorney should be able to assist you in finding a business broker to find a buyer if one is not evident. Once that first offer comes through, your attorney and your financial professionals should be able to assist you in determining the best mechanism to sell your business. Asset Sales and Stock Sales are two mechanisms that may be discussed.

- An **Asset Sale** is, as the name implies, a sale of the business's assets: the equipment, property, customer lists, contracts, and good will. The purchaser then operates under a new name using the purchased assets. The purchaser does not purchase any liabilities of the company. There are certain tax advantages in being able to allocate a purchase price to the various components of an asset sale.
- In a **Stock Sale**, the purchaser buys the stock of the company and assumes all assets and liabilities of the company. The purchaser simply steps into the shoes of the former stockholder. This is a less common occurrence with closely held businesses but is an option for the sale of a business.



*Family Business Succession Plans:
5 Things You Need to Know*

*Click here to
watch video.*



7. YOUR ATTORNEY ASKS HOW YOUR BUSINESS IS DOING

Your attorney should understand the different aspects of your business and industry, which sectors are profitable, which are not, and how changes in the market impact your company. If your business lawyer isn't checking in with you periodically to ask how your business is going, they should be. Each business and each industry have different cycles that present opportunities for risk mitigation and growth.

In a down economy, you may want to pursue collections more vigorously or strengthen default language in contracts. In times of growth, meanwhile, you may take the opportunity to implement new programs or incentives to employees. It may also be a good time to revise important agreements or consider combinations with like-sized companies.

If your lawyer is communicating with you, and you with them, it helps them spot issues to keep your business out of trouble and navigate the legal environment surrounding your business so that you come out on top.

8. YOUR ATTORNEY CAN HELP YOU NAVIGATE A LAWSUIT

One of the most obvious times your lawyer should be assisting you is when your business or one of its owners is sued, or when it is time to enforce your company's rights against another party through litigation. Upon being served with a demand letter or a lawsuit, immediately communicate with your attorney and provide her with the complaint. Failing to respond to a complaint within a certain time frame can not only jeopardize your defense but result in the default.

Once the litigation process is underway, your attorney should be communicating your options, the likelihood of success, and opportunities for settlement. Though litigation is very unpredictable, you should request and receive an estimate of the expected legal expense of the litigation and opportunities for settlement.

As the litigation process ensues, there may be circumstances that require you to testify in a deposition, answer questions pursuant to interrogatories or requests for admission. Your attorney will prepare you for your deposition and guide you through responses to other discovery requests.

The litigation process is not for the weak, but with the counsel of your attorney, you should be able to get through the process in one piece.



9. YOUR ATTORNEY CAN PROTECT YOUR INTELLECTUAL PROPERTY

Every business has intellectual property to protect. It can be the name, product, trade secret, copyright, trademark, or patent. Protecting a business' intellectual property can include registering it with state or federal agencies, policing the use of it, or confirming that it is indeed unique. An attorney should be able to identify which intellectual property needs to be protected, and if they do not specialize in the work themselves, refer you to an attorney who can.

10. YOUR ATTORNEY CAN CONNECT YOU TO VALUABLE ADVISORS

Your business attorney may not have all the skills necessary to handle every legal matter that should arise, but they should have the connections and resources to connect you with legal specialists that do, like tax attorneys or patent attorneys. Moreover, your attorney should have accountants, bankers, brokers and other professionals at the ready so they can easily connect you should the need arise. A good attorney has those networks in place and will try to connect you with the professionals that are best suited to assist you.

If your attorney isn't helping your business succeed, then what are they doing for you?

Your business attorney should be willing and able to do everything noted above. And it should be very clear that they want to help you do what you do best — run your business.

In all the above ways, your attorney should be making it easier for you to reach your business goals, not harder. Your attorney-client relationship should certainly not be causing you additional frustration and anxiety, on top of your existing legal concerns. If that is the case, please call me. I would love to hear what you have to say and determine how I can help.

About the Author



Zana Tomich is a co-founding partner of the Detroit-based law firm Dalton & Tomich, PLC. She is a business lawyer who helps small and mid-sized businesses in Michigan capitalize on opportunities and manage risks. A trusted advisor to her clients, Zana often serves as a fractional general counsel, helping businesses with issues ranging from corporate governance to employment matters, including the development of employee handbooks. She has extensive experience negotiating employment, non-compete, non-solicitation, and severance agreements, as well as helping businesses navigate partnership disputes. She has been named a 2020 Go-To Business Lawyer by Michigan Lawyers Weekly, a Top Woman Attorney in Michigan by Hour Magazine, and a SuperLawyers Rising Star.

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