

## DOCS ONLINE VERSUS DOCS FROM YOUR BUSINESS LAWYER FOR YOUR BUSINESS

### *(Turning Back to Expert Processed Information.)*

A recent article in the New York Times<sup>1</sup> discussed the trend back to travel agencies, particularly for international vacations. One reason for this is that although a plethora of free or low cost information exists online, the traveler may need guidance to identify what kinds of trip to take, sights to see, etc. and help to evaluate the data received.

Another reason is the underlying premise of online information: that one can substitute availability for expertise. But the fallacy of this premise can be demonstrated to the business owner by just substituting the word “plumber,” or “contractor,” “mechanic,” or “bricklayer,” for “lawyer,” as in “You do not need a mechanic and we do not give mechanical advice.” Or, you do not need a doctor and we do not give medical advice.” The fact is that “trades,” including law and medicine, require years of training, not just as an introduction to the field, but knowing how to process data as a doctor or lawyer, or plumber, mechanic, etc. I can buy tools, but that does not mean that I know how to use them at a professional level. You can buy a contract or form, but that does not mean you know how to use it or that it will serve you well. The expert knows what to look for and how to fix the problem effectively. So, unless you as a contractor, plumber, HVAC specialist, etc. want to concede that your trade is unnecessary and superfluous – which obviously it isn’t – then for the same reasons, you should not assume the superfluity of lawyers and legal work.

Lawyers are licensed by state, the law varies by state. Where was the contract written? Under what law? Was it written by a lawyer licensed in your state? Are the underlying regulations for your occupation the same in New Jersey as Arizona? This state law and license effect can be huge. For example, Arizona recognizes and will enforce properly drawn non-compete agreements while generally California will not. Other state law may be somewhere in between. How will you know the difference? And, how can you take maximum advantage –and avoid major consequences -- of the law of your state?

In every trade we do not know what we do not know. In law this knowledge comes from training in the law and years of practice as a lawyer. It amazes me that to save \$350.00 – whatever the lawyer’s consultation fee is for the business matter – the same contractor who would easily justify his mark up based on his knowledge and experience – would try to handle business legal matters by him or herself. As with do-it-your-selfers on home projects, business owners who do legal work by themselves are not only likely to make serious, life-altering mistakes, but also to walk away from valuable knowledge, information and experience which the lawyer can apply in the form of tailored advice and contracts to the business owner’s particular business, customers, and operating history.

In a nutshell here are some advantages of using a business lawyers for advice and contracts:

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<sup>1</sup> On or about April 22, 2012.

1. Years of legal training leading to the Juris Doctor degree, plus yearly CLE (continuing legal education) requirements
2. Years of practical experience dealing with clients whose business may be like yours and whose matters may be similar to yours.
3. Legal advice tailored to your particular personality, business, operating history, needs, financial circumstances, and
4. Contracts tailored to your business, locale, governing regulations, and concerns, and which take advantage of favorable law and minimize risks under unfavorable law and circumstances.

This firm has three or four key terms and conditions that we add to every contract that we do or that we revise for our clients. These provisions have benefits for the client far exceeding their costs. One example is a limitation of damages clause which can limit a customer's claim from loss profits to the costs of goods provided. This can be the difference between \$995 and \$995,000, all for the price of a good contract.

From a cost-benefit analysis using a good business lawyer to get a good business contract is a no-brainer. Say, the cost of the contract from online is \$99 to \$395.00 while the cost of the contract from the law firm including consultation and advice is \$995.00. Why should you hire the local business lawyer to draft to contract? The short answer is that for the reasons stated above: "Contracts are like shoes: One size does not fit all nor is one size suitable for all occasions." By using a local lawyer who is familiar with local law and who has experience with your business and your type of business you can have advice and a contract tailored to and for you. And, that's the key isn't it? If the advice and contract are not based on you, your needs and your business then it is just general information which may or may not be helpful and may even be harmful if incorrect legal principles are applied.

So, why would anyone risk their business – in which they have invested tens of thousands of dollars and years of their life in work, sacrifice and dedication– to save, say, \$600.00?

One perceived reason is convenience. The Internet is there day and night at your time and place. The lawyer is not. With a lawyer you have to drive and make an appointment, etc.

Actually this is not true. Lawyers are "techies" too and do appointments by teleconference and or video conference. Our firm does both. We have clients we have never met in person, including international companies doing business in Arizona.

Another reason is the "good enough" fallacy, i.e. this document from online is good enough to suit my needs. But, how do you know whether it is or not? A common error is what I call the "the docs look OK to me" fallacy, e.g. where clients who are buying a business may not realize that the contract before them lacks the one to three pages of meaningful "Representations and Warranties" designed

to protect the buyer in that transaction. To exaggerate, as I often do, when one buys a business, one does not buy the business or its assets, but what the *contracts say* about the business and its assets.

Lawyer advocacy does not apply just in litigation but in any form of legal representation, including the drafting of your business documents. This is what I call the “special ops” aspect of business representation. Why would you carry and use a 22 rifle when you can have an AK 47 or something more powerful and useful in your circumstances? Many times – if not most of the time – good legal documents can prevent problems. The primary goal is to avoid legal issues, if possible, not to win lawsuits. But good documentation provides both benefits.

In business the race is often won by the party who best capitalizes on the experience of others, including their successes and mistakes. An experienced business lawyer can advise you based on his or her knowledge of the success or failure of other clients in similar situations. This advice can take to the next level without having to learn the hard way.

It has occurred to me that some business owners seem to plan their family vacations more carefully than their business life. Whether or not that is true, as stated in the New York Times, many travelers are coming back to expert advice from travel agents, especially for major trips. For the same reason, it may serve you well to plan your business journey using experts as well.