



Corporate Pitfalls to Avoid

Managing a business entity involves fewer formalities today than it may have in the past. For example, keeping track of an embosser is no longer necessary and, depending on the type of entity, share certificates are likely not necessary. That is not to say, however, that there are no important formalities to still be observed. In my practice, more often than not, its two formalities that are overlooked which cause the most issues: failure to file the entity's tax filings and the failure to sign contracts properly.

Franchise Tax Filings. An easy way to let entity status lapse is to miss annual franchise tax filings that need to be made with the Texas Comptroller of Public Accounts. Annual filings are generally necessary even if the entity never does business or generates enough income to owe any franchise taxes. Forgetting to make these filings can ultimately result in forfeiture of the entity's charter, causing the entity to lapse.

So what are the possible consequences for losing your company's good standing with the State? For one, you could lose the rights to your entity's name, which would allow someone else to lay claim to the name and use it for his or her company. It could also expose you to personal liability on contracts that you, as an officer of your company, sign on behalf of your company, because the company does not technically exist in the eyes of the State.

One less obvious consequence of letting the entity's status lapse is that it can slow down a real estate closing. This is because the entity will almost certainly have to be brought back into good standing, or reinstated, before closing. Reinstating after a tax forfeiture requires an entity to make filings with two different government offices – the Texas Comptroller of Public Accounts and the Texas Secretary of State – and neither office will make processing your reinstatement filings their top priority, with the process likely taking several business days. It is not uncommon to see last-minute issues arise as the day of closing fast approaches, and discovering that you have failed to make the proper franchise tax filings would be a most unwelcome additional issue to address. Such a delay in closing could range from a minor annoyance to a breach of the contract that kills the deal altogether.

Company Signature Blocks. As mentioned above, losing your company's status with the State could expose you to personal liability if you sign on behalf of a defunct entity. Another, seemingly benign way to expose yourself to personal liability when attempting to act on behalf of your company is to not utilize a proper company signature block.

Just last month, a Texas Court of Appeals ruled that a company's manager was personally liable for over \$32,000 on a contract that he intended to sign on behalf of his company. In *PMC Chase, LLP and Steve Turnbow v. Branch Structural Solutions, Inc.*, the appellate court confirmed the trial court's judgment that Mr. Turnbow was personally liable for the cost of work

done for his company, because it was Mr. Turnbow who signed the contract without the explicit indication that he was signing as the company's manager (and therefore as the company's agent).

In October 2015, Mr. Turnbow met and talked with Kerry Branch, the president of Branch Structural Solutions. Mr. Turnbow asked Mr. Branch to send him a proposal for a commercial construction project for PMC Chase, and Mr. Branch obliged, sending a one-page proposal to the attention of Steve Turnbow. Mr. Turnbow then signed the proposal, failing to indicate that he was signing on behalf of his company, PMC Chase. In December 2015, an invoice was sent to Mr. Turnbow, which went unpaid, so Branch Structural Solutions thereafter filed suit to collect on monies owed.

Despite the content of the conversations between Mr. Turnbow and Mr. Branch, the court found no ambiguity with this contract that would allow evidence outside of the contract (such as those conversations) to show a different meaning and intent to the contract. As such, Mr. Turnbow found himself to be personally liable for the payment of work that he intended to be performed for his company, not for himself. The court stated:

“When an agent seeks to avoid personal liability on a contract he signs, it is his duty to disclose that he is acting in a representative capacity and the identity of his principal...”
[This contract] bears Mr. Turnbow's signature and does not mention PMC Chase or indicate representative capacity in any way. Thus, on its face, the contract unambiguously shows it is the obligation of Mr. Turnbow personally.

As is often the case, business matters move quickly, and formalities can be forgotten. Filings with the Secretary of State and the Comptroller are often “out of sight, out of mind.” Simple agreements get signed hastily because the parties want to get the deal done as soon as possible. Sometimes there are virtually no adverse consequences to such situations. But other times a deal could be lost entirely or a person could accidentally expose him or herself to liability only intended for the company. In the end, it's better to slow down and do it right. You don't want to be surprised by the answer to the question: “What's the worst that could happened?”

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