Are You Sure Your Business is Protecting You from Being Held Personally Liable?

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As a business owner, you know that you need to be concerned about protecting your company's assets; but, do you need to be concerned about protecting your personal assets as well? In some circumstances, the answer may be, "Yes." Specifically, suppose a business entity is not structured and managed appropriately. In that case, this gives rise to the risk of creditors and plaintiffs attempting to hold the entity's owners personally liable by "piercing the corporate veil."

What Does it Mean to Pierce the Corporate Veil?

There are several benefits to forming a corporation or limited liability company (LLC) when starting a business. One of these benefits is that operating as a corporation or LLC provides liability protection for the company's owners. The entity exists as a separate "person" from its owners; and, *provided that the entity is structured and managed properly, only the company can be held liable in the event that it goes into debt or gets sued.*

When the corporate veil is pierced, the company's owners can face personal liability, notwithstanding the entity's existence. The company can still be held liable, but so can the company's owners.

When Can the Corporate Veil Be Pierced?

There are three primary circumstances in which the corporate veil can be pierced. While these circumstances are all very different (although they may exist simultaneously), they all have the same consequence of putting the business's owners at risk for personal liability. The corporate veil may be pierced if:

- **The business entity is simply an "alter ego" for its owner or owners – This is by far the most common reason for piercing. A corporation or LLC is a separate legal entity from its owners, and it needs to be treated as such. If the company's owners commingle business and personal funds, if they use personal assets for business purposes (and vice versa), and if they generally ignore the formalities of the corporate or LLC structure, then the entity may be considered nothing more than an "alter ego" of the owners themselves.**
- **The business entity is undercapitalized – Courts have also held that piercing the corporate veil is appropriate when a business entity is undercapitalized. Here, the justification for piercing is that individuals should not be able to shield their assets simply by filing the requisite paperwork to establish a corporation or LLC.**
- **The business is engaged in fraudulent or criminal activity – If a company's owners commit fraud or engage in other criminal activity in the company's name, this too can provide grounds for piercing the corporate veil. The justification here is similar to that for undercapitalization—while the corporate and LLC structures are intended to provide liability protection for legitimate business operations, they are not intended as a "get out of jail free" card for individuals who engage in fraudulent or criminal behavior.**

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