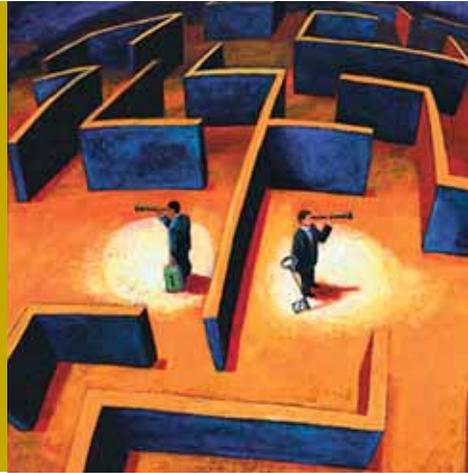


Annual
Company
Checklist



Issues Every Business Owner
Should Consider

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James D. Rosenblatt is a principal with The Rosenblatt Law Firm (RLF) specializing in providing preeminent legal and business services for a wide variety of business clients. The Rosenblatt Law Firm was formed to provide clients with better business minded legal advice. Prior to starting RLF, James Rosenblatt spent 13 years in private practice with the small law firm of Davidson & Troilo, P. C., the large national firm of Akin, Gump, Strauss, Hauer & Feld, LLP and finally as General Counsel and Executive Vice President for a national company handling legal, human resources, insurance and accounting issues. Years of experience have taught that the law is rarely clear cut, business people need to understand and be able to evaluate the risks involved in making a business decision which has legal implications.

James Rosenblatt works with a multitude of clients concerning their legal and business needs. Beyond legal advice, RLF provides strategic planning, budgeting, retreat facilitation and accounting management and advice. Moreover, James Rosenblatt has taught business and legal courses to both graduate and undergraduate students at a variety of universities. James Rosenblatt has also sat on numerous non-profit boards of directors including VNA and Hospice of South Texas, Eleanor Kolitz Academy and Park Forest Home Owners Association, and was a participant in Leadership San Antonio Class XXIII.

James Rosenblatt understands business. He communicates with top decision makers to address legal needs while simultaneously addressing business goals.

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Introduction

The purpose of this booklet is to encourage you to view your business from a different perspective. Most business owners are extraordinarily busy and become focused solely on the day-to-day tactical aspects of their business. We are all conditioned to change the oil in our car, have an annual health check-up and tune the HVAC yearly. Yet, most people fail to take the time to evaluate the operation of their business. As a result, many owners work IN the business and not ON the business.

Interestingly, many businesses, whether big or small, retail, construction or professional, have common issues. This booklet provides a series of questions and tasks designed to enable business owners to question their business practices in a new and unique way.

Although, the term “business owner” or “owner” represents the chief executive officer; in many small businesses, the CEO may also be the sole shareholder, board member and/or interest holder.

This booklet provides an opportunity to step outside the box and give insight into many areas of your business often left unaddressed.



James D. Rosenblatt

Company

Many businesses operate through some type of entity such as a partnership, corporation or limited liability company in an effort to avoid liability. However, if the owner does not provide the necessary attention to the company, the company will not be able to protect the owner.

- i) **Choice of Entity:** Regular changes in the tax code, the business code, or the business itself require the owner to ensure the type of entity utilized still makes legal and financial sense. Many small businesses operate as a sole proprietorship; however, as the business becomes more complex, a formal business entity should be considered.
- ii) **Minutes:** Corporate entities require minutes be kept. Have annual minutes been completed for your corporation? Do the minutes reflect all major changes? Is the list of officers still current?
- iii) **Qualifications:** If the company is “doing business” in a particular state, has the company fulfilled the requirements dictated by that state's laws? While not a difficult process, lack of qualification can lead to serious problems for a company. Therefore, the company should review, at least once a year, where the business is currently operating, where it has employees and where it has business locations to ensure the company is in compliance.
- iv) **Registered Agent/Address:** Do the current corporate records reflect changes in agent and address? If the company is using its operating location as its registered address, is a procedure in place when legal documents are served? If not, the company should have an offsite location. If the company moves its location, the company must change its registered address. Moreover, if the company is using a third party as the registered agent, does that person still have a relationship with your company and can they find your company if legal paperwork is received?

- v) **Legal Changes:** Between federal and state legislatures creating new laws and regulatory agencies creating new rules, an annual compliance review is a must. Also, major legal cases can effect how the company does business, advertises or contracts with the public. Does a change in the type of business performed require the use of a different structure or other changes? If the company has begun doing business in a new state, the need for this type of review is even greater.
- vi) **Buy/Sell Agreement:** Does the company have a buy/sell agreement? If yes, has the price been adjusted? If life insurance is used to fund the buy/sell, is there enough insurance in place? If a buy/sell is not in place, should there be?
- vii) **Doing Business As:**
 - a. Is the company operating under an unregistered trade name?
 - b. If the trade name has been registered, is it used outside of the registered area?
 - c. If the trade name has been registered, when does it expire?

Planning

Lack of planning results in a company becoming stuck in a hole without a future. If the officers of the company are not constantly examining where the company is today, planning where the company is going and what its competitors are doing, those competitors may eventually run the company over. While the owner of the business must be involved in the planning process, involving employees will create a better plan and tie the employees to the success of the business.

- i) **Five Year Plan:** This plan reflects the company's current long-term view and the direction in which the owner wants to move.
 - a. While a five year plan is standard, planning for the future is more important than tying it to a specific term of years. A three year or 10 year plan may be more appropriate. Regardless, a long-term plan must be a set position in the future and define what the company will look like at that moment. Of course, if the company created a five year plan six years ago, it is not doing the owner or the company any good.
 - b. A five year plan should be revisited at least once a year to adjust for the progress, or lack thereof, the company has made. This review allows for adjustments for new threats and opportunities and to rethink the owner's vision and whether the plan still makes sense.
- ii) **One Year Plan:** This plan can be a fiscal or calendar year plan. The one year plan breaks down the company's long-term plan into manageable pieces, tying it directly to a given operating year.
 - a. Although different than the five year plan, it is just as essential. The one year plan should be concrete and include specific tasks and markers.
 - b. The one year plan should include operational and financial goals. Goals should have a set of metrics so the business owner can determine compliance. Budgeting is discussed later in this booklet.

- iii) Quarterly Tasks:
 - a. Every item on the one year plan should be converted into a list of tasks and objectives.
 - b. Each line item of a task should be ordered and assigned a responsible leader (i.e. Part A must be completed before Part B, but Parts C and D can be completed together).
 - c. If you accept responsibility for all tasks, you can assume that none will be fully completed.
- iv) Reviewing Plans: No plan is perfect, and only by making a company's plan a working document can it remain flexible enough to change with the company and its environment. Plans which are made and then placed in a file but never reviewed or consulted are worthless.
- v) Studies show that to make employees accountable for their quarterly tasks requires quarterly review. If tasks are not being completed, an adjustment of the one year plan is warranted. However, everyone must keep pushing to get back on track. If tasks are being completed ahead of schedule keep moving forward. A one year plan may ultimately become a nine month plan. In fact, it may take time to create a one year plan which actually takes one year to complete. Since tasks have been assigned to the employees, celebrate their successes. The more you, as the business owner acknowledge employees' achievements, the more the goals become the employees' goals.
- vi) The five year plan should be reviewed annually and pushed out one more year, with the new one year plan and the quarterly tasks created and assigned. This process will keep the business fresh and moving forward. It will also allow early detection of problems and opportunities.

Financials

It is impossible to manage a company without the business owner understanding the company's financials. Understanding, however, does not mean the owner must be able to apply debits and credits. If the owner cannot understand the story painted by the company's monthly balance sheet and profit & loss statement (P&L), the business owner will ultimately miss warnings that can only lead to problems.

- i) Budgeting: One of the best ways to begin understanding the company's financials is to create an annual budget. While forecasting revenue is very important, the fixed parts of the company's P&L are just as vital. By understanding what expenses are fixed each month, the owner can keep a close eye on anomalies. Moreover, the owner can focus on the variable portion of the P&L (i.e. revenue and costs of goods sold). Selling more business with better margins will obviously make the P&L look better, but allowing the fixed portion to become bloated will lead to problems when times are leaner. Utilizing a proper budget will allow the owner to better understand where the real expenses are located and whether to cut overhead.
- ii) Balance Sheet: Although the P&L is the easier report to understand, the balance sheet is also very important. The P&L can look positive even if the business is not collecting its accounts receivable. The balance sheet will show the shrinking cash position and growing accounts receivable balance on the balance sheet. Likewise, buying assets will only be reflected on the balance sheet with little effect on the P&L, but can reduce cash below desired levels.
- iii) Cash Flow Planning: Too many companies manage their financials by the cash in the bank method. The theory being that the company must be doing great because there is cash in the bank. While cash management is obviously very important, the owner may miss a lot of detail and information essential to operating a business. For example, there may be cash in the bank because a customer has just paid a past due account receivable but has stopped buying and therefore revenue is actually dropping. Thus, cash flow only tells part of the picture.

- iv) **General Ledger Codes:** An annual tune-up ensures that general ledger codes which are no longer useful are made inactive and codes which have become overly active can be broken down. For example, if the business changes from using its own fleet of vehicles to use of a delivery service, the company should utilize less codes for the company's fleet costs. Likewise, the company might want to add codes in order to quantify whether the company is using local or out-of-town delivery services.
- v) **Reports:** It is a useful exercise to reflect back at least once a year and evaluate the reports you have received. For example if the company changed its policy from COD to credit, constant evaluation of the quality of the accounts receivable aging report is essential. Likewise, if the mix of business changes, understanding the new mix, as well as the financial ramifications, cannot be overstated. While the company's P&L may only have revenue and costs of goods sold, there is a big difference between revenue obtained with a 30% gross margin and revenue obtained with a 10% gross margin.

Banking

Your company's banking relationship is the most important relationship your business has. While some businesses may have other critical relationships, without the ability to borrow money, most small businesses will fail. Moreover, many small businesses are undercapitalized, and only through debt can they succeed.

- i) **Bank:** Since the quality of the banking relationship is critical to any small business, you should understand how the bank views your company. Does the bank like and understand the company's business and its industry? Does the bank have relationships with others in your industry? Where do the bank's biggest concerns with your company's business lie? You should ensure the bank is educated about your company, its business and industry so they will understand how to interpret degradation in the financial statements. Most importantly, you should have relationships with other banks so that the company can change relationships if necessary.
- ii) **Adequate Funding:** The most important part of business-CASH IS KING. So many businesses run out of cash, hampering growth and necessitating the close of business. That being said, cash and debt management must be used in concert to allow all creditors to be paid while protecting the image of the business for a rainy day when the company must slow pay.
- iii) **Line of Credit:** An established business should use its line of credit as part of a cash management program. Banks expect a company to utilize its line of credit, while the company's creditors do not expect to become the company's line of credit. Pay the creditors timely and draw on the company's line as needed. If for some reason the company needs to delay paying its creditors, the creditor will likely be more receptive if the company has paid its obligations in a timely manner in the past.

- iv) Long-term Debt: Utilize long-term debt for major purchases such as acquisitions and capital expenditures. More importantly, do not accelerate long-term debt unless the company's cash reserves greatly exceed the company's foreseeable monthly cash needs.
- v) Cash Reserve: A small business should ultimately have one month of cash in the bank and one month of cash in the line. This should be a long-term goal and should be the amount of cash that a small business owner is prepared to invest when starting the business.
- vi) Ratios: An important part of any discussion with a banker is a determination of which financial ratios the bank will watch. Many bankers will attempt to adjust the ratios annually as the business becomes financially stronger. These attempts should be fought vigorously. When the company violates these ratios, and every business has degradation of their ratios at some time, the company is in default. Even if the bank is not concerned and provides a waiver, there is still a hammer available for later use.
- vii) Accounts: Too many or not enough? Every year, prior to an annual review with your banker, you should evaluate your company's current account needs. Every account which the company has with the bank should be evaluated and re-examined. Remember, the bank charges your company for every account it has open, whether it is a monthly fee or an offset based on balances.
- viii) Loans: The larger the number of loans your company has, the higher the internal accounting cost. Moreover, if your company is paying a high interest rate, you are losing money. The same can be said for keeping balances on credit cards. Consider rolling the balances from a number of loans into one, especially if this will lower the interest rate in the process.
- ix) Signatories: Who has authorization to sign on behalf of the company? Do past employees still have authority? Obtain a list from each bank with whom your company does business and confirm who is authorized.

- x) Interest rates: Unless you understand the cost of money, you cannot evaluate growth opportunities. If you estimate a project will provide a 7% return on investment, but the cost of money is 8%, you should not fund the project. It is also important to understand how your banker views the company as a risk. The spread to the prime rate is a very important indicator. You should have an idea of what improvement in your company's financials is required to improve the cost of funds and how that evaluation is made. Likewise, you should know what degradation in financial strength would necessitate an increase in borrowing cost. You should watch interest rate trends and understand your business' line of credit and other floating obligations will be affected. Estimates of interest rate trends should be fed into your budget.

Insurance

The most important part of an insurance review is to ensure that certain information is current and that changes in operations are still covered under existing policies. A comprehensive review should include meeting with your broker to discuss changes in the company and its insurance needs prior to renewal.

i) Coverage: Most insurance policies are delivered long after the company has purchased its coverage. Because of this, there is rarely an opportunity to review the insurance policies in detail with the broker and understand the coverages and exclusions. While the company's broker will typically highlight the features of the company's policies, unless the broker truly understands your business and engages with your company on a continual basis, it is likely something will be overlooked. As a result, a loss could occur, a claim could be filed, an exclusion could be invoked and coverage could be denied. Take the opportunity to read the company's insurance policies. Insist the broker meet with you and that the broker conduct a thorough review of coverages and exclusions. All insurance policies contain exclusions. It is important to understand what impact they can have on the company's financial well being.

ii) Understand the Insurance Marketplace: Insurance companies expand and contract their product offerings and their pricing almost as if they were a financial commodity. These "hard" and "soft" insurance cycles arise from a number of factors including the cost of capital, return on investment, catastrophic global events affecting the cost of reinsurance, litigious climate and social torts such as mold claims, foundation claims and class action lawsuits. You should take cues from national and global events as well as the economy to anticipate changes in the insurance market. A good broker will keep you informed of changes in the market. During "hard" markets, consider higher deductibles, lower coverage limits, dropping certain insurance and self-insuring the exposure. During the "soft" market, take lower deductibles and higher limits, transferring more risk to the insurance markets.

iii) Changes in Real Property: Annually, most likely in preparation for your annual

insurance renewal, you should look over the company's existing asset/property list. Has the company added new real estate property, moved, or added a satellite office? If the company sets up an office in the owner's house, was it added to the company's insurance? An annual review should not, however, take the place of proper procedures to add such real property onto the company's insurance policy to ensure coverage.

iv) Changes in Autos: The business owner should look over the existing vehicle list on an annual basis. Does the company have a policy concerning removal of comprehensive coverage and property damage to owned vehicles? If the company is paying for property damage to owned vehicles more than five years old, you should evaluate whether the expense is justified. However, an annual review should not take the place of proper procedures ensuring the addition of vehicle changes to the company's insurance policy.

v) Changes in Equipment: An annual review of the existing equipment list is a must. If the company has a depreciation schedule for its capitalized assets, this is an easy place to ensure that expensive property has been added and is covered. However, an annual review should not take the place of proper procedures to regularly add such equipment to your insurance policy.

vi) Understand Your Exposures: All business ventures, by their very nature, have risks. Understanding these risks and defining them as inherent hazards or controllable exposures is the first step you can take in minimizing certain business risks. Many exposures can be managed, controlled, minimized, and in some cases, eliminated. Controlling your exposures means fewer claims which translate to lower insurance costs. Develop internal procedures for employee selection, training and supervision with an eye towards occupational safety. Are safety devices such as machine guarding, personal protective equipment and eyewashes available when appropriate and in good working order? Are your vehicles and equipment well maintained and regularly serviced? Are exits well marked and void of obstacles? Many insurance companies will provide a safety audit at no additional charge. Take advantage of this service.

vii) **Named Insureds:** Depending on the type of business, the company may have a significant number or only a few named insureds covered under its policy. If there are multiple named insureds, there is a tendency to reissue every year as part of the insurance renewal. However, a better policy is to review the list and remove those names no longer needed. While there may not be a cost for additional named insureds, there are additional risks/inconveniences that can be avoided.

viii) **Selecting the Right Broker:** One of the most crucial considerations in selecting a business insurance program is the expertise, knowledge and the market-reach of the broker. A good brokers' expertise will be defined by their ability to evaluate and truly understand your business exposures and their ability to recommend the appropriate insurance coverages. The value of a good broker will be defined by the insurance companies they represent and the proposals they are able to negotiate and bring to you. A good broker will evaluate your exposures in-depth and discuss them at length with you. They will ensure that you understand your exposures to loss, help you achieve a balance between insurance coverages and premiums, and understand the exposures you elect to retain without the benefit of insurance coverage. A properly designed insurance program should be responsive to your exposures at the beginning of the policy year and should also adapt to exposures that evolve during the course of the year. Most insurance brokers will provide an insurance review just prior to your insurance renewal. Your broker should work with you and engage you throughout the year to discuss changes in your business and changes in the insurance markets.

ix) **Bonds:** If the company is required to issue bonds for bidding purposes, completion purposes or permit purposes, you should review the company's current list and obligations. If an existing bond is needed for a particular purpose, confirm it is current, or cancel if it is no longer required.

Human Resources

Many smaller companies tend to ignore this extremely important area. Most problems for a small company, and most potential liability and litigation, stem from employees. Making sure you are aware and aggressive can reduce problems and protect you as the business owner and the company.

- i) **Employee Handbook:** Many companies fail to produce this crucial document. A handbook should incorporate all policies concerning your employees. While a document can be purchased to ensure compliance with all federal and state requirements, only by tailoring this document to your company will it actually be useful. Many employers are shocked to know how many times employees look in the handbook for guidance. Importantly, if the company's handbook has a policy, it must be followed. Without reviewing the handbook annually, the owner will not be able to update and make changes as company policies.
- ii) **Changes in the Law:** It is extremely rare that a year goes by without a statutory change in some area of employment law. Between federal and state legislatures creating laws, regulatory agencies creating rules, and courts issuing opinions, ensuring compliance requires a review of the business and its employee policies.
- iii) **Changes in Technology:** While many of these issues can and should be addressed in a handbook, the magnitude of technology changes, requires specific notation. As businesses change, more employees are given cell phones, computers, and blackberrys. These create a whole range of issues from using a cell phone while driving to liabilities for lost or stolen equipment. A business owner should review the company's handbook, and other policies to ensure any distributed equipment is accounted for and adequately handled.
- iv) **Employee annual reviews:** While most employers know they should complete an annual review, busy schedules often result in many supervisors never completing the paperwork. In small offices, constant contact may allow for more immediate feedback. For legal purposes, however, nothing beats a written review. A review does not have to be elaborate, but should reflect the current job requirements, strengths and weaknesses and areas of improvement. Just as important, the employee should be encouraged to provide their own comments in writing.

- v) **Compensation Structure:** An annual review of compensation ranges for the various positions in the company should be performed. Although an owner may not change compensation based on the local ranges, an idea of how the company's employees rate in comparison to others in similar positions can be beneficial. If the company pays more than the normal range, the skill set of its employees should be above normal. Likewise, if the company pays less, the company should expect a smaller skill set.
- vi) **Benefits:** The business owner should conduct an annual assessment of the costs associated with employee benefit packages and a comparison of like-situated positions in the field. Benefits can change based on a company's fiscal growth, the number of employees, or a number of other reasons. Necessary cuts in employee benefits can be explained, as well as, potentially replaced with more appropriate benefits. It is important to remember that benefits include more than health insurance; they also included vacations, disability and dental insurance.
- vii) **Retirement:** Every business owner should review the investment options provided as part of the company's retirement plan, at least annually. They should include an examination of the assets held in the plan. Traditionally, financial breaks for retirement plans are usually around \$1 million and \$5 million. When the company's plan exceeds those amounts, consider seeking active bids to manage the plan in order to obtain savings for the company and/or its participants.
- viii) **Job Descriptions:** If the company does not have written detailed job descriptions for each position, it is well worth the time investment. Employees appreciate the structure and the descriptions provide an opportunity to be evaluated against a known list of criteria. Moreover, properly listing the physical and educational requirements of a given position provides a level of protection against litigation. Job descriptions should be reviewed to ensure they remain accurate and relevant. This ensures that newly hired individuals or those who have been promoted are covered by current job descriptions.

- ix) **Employment Taxes:** If employees have been moved to another city or state, the business owner should ensure that the company is properly accounting for any variances of employment taxes.
- x) **Employee Files**
 - a. I-9: Some documents used to verify the right to work expire and must be renewed. It is the company's obligation to seek out new documentation.
 - b. W-4: While it is the employee's obligation to update their tax withholding information, providing a new W-4 to each employee as part of benefits renewal ensures current information.
 - c. Driver's License/Insurance Information: If employees drive on company business, current drivers license and vehicle insurance information should regularly be kept updated.
 - d. Contact Information: Each employee's contact information and emergency information should be updated, at least annually.
 - e. Training: Based on the supervisor's annual evaluation of the employee, the supervisor and the employee should create a training list. The training does not have to be third party provided, but may be on-line or cross training with other personnel. The training should include completion dates. A review should ensure that the employee is creating a training list and the list is being completed each year.
 - f. Disciplinary Records: You may need to consider a review of each employee's disciplinary action. By looking at an entire year, the business owner can better understand an employee's absences, whether periodic or random. The review may also reveal violations or other problems potentially solved by better training.
 - g. Safety: Most companies are required to prepare and post an OSHA form on safety. Every business owner should review this form with a view towards training. You should also confirm that completed safety training has been recorded in employee files, thereby providing some defense against potential OSHA fines.

Contracts

- i) **Real Property Leases:** More than likely, you have not reviewed the company's property lease since the day it was signed. However, a review ensures adherence with the company's obligations under the lease, such as purchasing an HVAC maintenance contract, the landlord's obligations and any ceiling on increases in rent or costs over the life of the lease. Moreover, if the company obtained an option to extend its lease, you should note any pending deadlines.
- ii) **Equipment Leases:** Reviewing the company's equipment leases reinforces the company's insurance obligations and what purchase opportunities, if any, the company has at the end of the lease period. Most equipment leases will become a month-to-month lease if the company fails to either return the equipment or notify the Lessee of its intent to purchase. It is incumbent upon the business owner to keep track of these dates.
- iii) **Subcontractors:** If the company utilizes subcontractors, you should review the company's current agreements to ensure they are up to date and that all required information has been provided. For example, if the company requires subcontractors to provide proof of insurance, has the company received a current certificate? Does the company require a waiver of subrogation and additional insured status? If so, do the certificates provided reflect such status? More importantly, if the company does not require an insurance certificate, waiver and additional insured status, why not?
- iv) **Purchase Agreements:** The business owner should review the purchasing habits of the company annually to determine if more efficient purchasing could reduce costs. For example, if the company is utilizing private courier services, has the company inquired whether signing an annual agreement will provide a discount from the list price? If the company is constantly paying for emergency shipping costs, can the company expand its inventory in order to reduce these expenditures? Remember, any money saved becomes net income.

Permits

Depending on the company's business and location, the company may need a variety of permits. Every business owner should review the company's outstanding permits annually and make a comparison against its actual needs. If the company has moved its business location, a city permit required by the former location city is no longer necessary. Many jurisdictions forget to send renewals, but the company still has the obligation to renew.

Intellectual Property

Many businesses fail to contemplate their intellectual property until it is too late.

- i) Trade Secrets: If the business has methods, documents or ideas that are essential to the operation of the business and are unique to the company, the owner has an obligation to protect them. If the business cannot or chooses not to trademark, patent or copyright them, the business' only alternative is to keep them secret. The company must limit access, bind employees' ability to take the business's secrets with them and defend them. Without these protections, the business has lost an important tool.
- ii) Trademark: If the business has a name, slogan or picture that is connected with the company's products or services, consider trademarking it. If the business has already trademarked it, the company must ensure that it is only used in the designated fashion and it is accompanied by the TM, ©, or SM. Just having the mark is not enough to protect it, the company must watch for copycats and put an immediate stop to any violation.
- iii) Copyright: Has the company created a handbook, brochure or other documentation representing an investment in time and money? Are those documents protected by copyright?
- iv) Patent: Does the company have a unique invention or process that is important to the company? Because of the cost of patenting, the return must warrant spending thousands of dollars or more on a patent. Moreover, has the company borrowed someone else's patent without licensing it, leaving the company open to litigation?
- v) Computer Software: Does the company have sufficient software licenses for each computer that is running the software? If the company does not, and a disgruntled employee knows about it, the owner can assume the vendor will be contacted. It is less expensive to have the proper licenses than to litigate whether you have violated another company's license.

Conclusion

Few people own or operate a business in order to handle the various issues which have been raised here. However, only by handling these issues in an organized manner can problems be prevented. The cost of preparation is much less than the cost of the cure.

If, after reading this book, you have questions or would like more information, please feel free to contact The Rosenblatt Law Firm. We look forward to working with you to make your company great!

