

## How to Screw Up Your Life by Starting a Business

By Donald W. Hudspeth Esquire

Some Axioms:

1. Nothing is impossible for the person who doesn't have to do it.<sup>1</sup>
2. It is easy to speak with confidence when one knows nothing about it.
3. Be wary of the "unknown unknowns<sup>2</sup>," i.e. not knowing what we do not know.
4. Life is hard. It is harder when you are stupid.<sup>3</sup>

Every week I get calls from clients who have started a business with no legal or other professional advice. This can lead to the situation that I call "untangling the necklace." By the time the client realizes she needs legal counsel -- and in some cases becomes desperate enough to hire an attorney -- things are really a mess -- an "all the King's horses and all the King's men" kind of situation. As with a serious illness that has advanced to the critical stage, in a case like this the attorney may not be able to return the client to "full health."

The question is: How does the client find himself in this position? Almost always the answer is because of one or more of the following:

1. Using a form instead of a tailored, negotiated document, e.g. a broker's sale agreement, which is designed to close the sale, not raise important issues to be resolved by the parties.<sup>4</sup>
2. Relying on information from a broker or other party with a stake in the transaction.
3. Not realizing that one is not buying the product, service or business in question *but what the contract says about the product, service or business*. You get what the contract says you get.<sup>5</sup>
4. Thinking that because the document is in English, he understands it and knows what he is doing. But unless the person has legal training or substantial experience in the area this supposition is false for a number of reasons. One problem here is that we do not know what we don't know.<sup>6</sup> In other words, unless you are schooled or have experience in contract law you would not realize what was not in the document (sometimes entire sections are

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<sup>1</sup> A. H. Weller, American author.

<sup>2</sup> Donald Rumsfeld, Secretary of Defense for Gerald Ford and George W. Bush,

<sup>3</sup> John Wayne.

<sup>4</sup> See my article "The Falsity of Forms," online at [azbuslaw.com/Publications/Articles](http://azbuslaw.com/Publications/Articles) (hereinafter "Website")

<sup>5</sup> See "the Candy Jar Speech" in my One Minute Lecture series. On Website as article and video on YouTube.

<sup>6</sup> Reasons include The Documents Look OK to Me Fallacy (On Website in the One Minute Lectures.)

missing), understand the importance of certain terms (provisions are put there for a reason) or truly understand their meaning. Legal terms are “terms of art,” i.e. they have a particular meaning in the legal context.

5. Thinking that because she is talented and knowledgeable in one area and does it well, she will do this new thing well. This does not follow. Just as a business person could not do surgery, a surgeon really should have an attorney help with business matters. Professionals, like physicians, are especially prone to the “doing-itself-yourself” mistake because they are so good, if not brilliant at other things. Business people tend to be resourceful and self-reliant, and they are used to counting on that, which often leads them to attempt tasks outside their skill set. But “big picture,” given the pace of knowledge and the amount needed to practice in any profession, the doctor, lawyer or whomever is lucky to keep abreast of his or her own profession, let alone someone else’s. Highly talented people can be their own worst enemy.

6. Some do-it-yourselfers undertake things out of their realm of knowledge and experience because of ego. For example, it is not uncommon for the opposing parties to drastically inflate their own importance, underestimate the knowledge and acumen of my client and generally behave like jerks in the situation. While this is hard on the client, who bears the brunt of this misconduct, it is good for me as a lawyer because most of the time those adversaries “go down in flames.” This is not because we are excellent – although we are - - but because they are not nearly as knowledgeable or great as they think they are.

7. Not realizing what is needed to create a proper business structure. For example, a new business may require one or more of the following:

- a. A new entity, like a corporation or an LLC,
- b. A shareholders’ agreement or LLC members operating agreement (the latter apparently required by law in Arizona),
- c. Trademarks (name and logo),
- d. A sales/service contract (often used as terms and conditions on the website),
- e. Drafting or review of a website design and development agreement,
- f. A privacy policy for the website,
- g. Employment agreements for key employees and confidentiality agreements for other employees,
- h. Lease review, revision and negotiation,
- i. Franchise document creation or review,
- j. Distribution and dealer contracts,
- k. Software transfer, development or licensing agreements, and
- l. Other assorted contracts and documents used in their industry.

I call this collection of documents and advice the “Legal Brick House.” The Legal Brick House is important because, as I tell my clients, the money to pay for our offices comes from those who do not have a sound legal structure.

8. Another, perhaps not the last, reason that clients get into trouble is by not getting any advice or input from a lawyer at all. Ideally, the lawyer, who has handled such matters many times before, will be involved from the beginning and walk the client through the transaction. As the attorney has no stake in the transaction, he or she can advise the client objectively, discussing positive and negatives as well as presenting options and recommendations.

As you can see legal work is “front end loaded.”<sup>7</sup> While building the Legal Brick House, and getting competent legal advice can take some time and money, it is the best place to spend your legal dollars. By analogy, it is much better to spend your money in the doctor’s office than the hospital or for emergency room surgery.

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<sup>7</sup> These are discussed in my article “The Money Hurdle and the Knowledge Ramp” (Website) to owning and operating our own business: