



# Safeguard Your Business: The Pennsylvania Entrepreneur's Guide

Guidebook & Quiz




# Introduction

Business owners face a myriad of obstacles during their lives. A properly-protected business is one which clearly protects its ownership from liability and allows it to engage in effective contracts and continue in the event of a disaster. Do you have a plan to deal with possible issues before they happen? This guidebook and quiz will cover these important topics and more.

We've identified three categories we use in talking to our clients:

- **Personal Liability.** Improper liability safeguards may expose a business owner to personal liability.
- **Contracts.** Vague or poorly-drafted contracts may cause problems in the event of a dispute.
- **Continuity.** You must have safeguards in place should you become incapacitated or deceased.



# Personal Liability Checklist

1. Are you operating your business as an entity (LLC, Corp) instead of a sole proprietorship?
2. Do you have a separate business bank account?
3. Do you have an operating agreement detailing how the business should be run?
4. Are you entering into contracts through the business, or entering into them personally?
5. Do you have adequate delegation of powers and duties?
6. Do you have the necessary insurance and licensing for your business type?

Business owners may be held **personally liable** if adversaries try to “pierce the corporate veil” through litigation. For example, when a business willfully commits fraudulent acts, a court may decide to ignore its corporate structure and hold the business owners personally liable for its debts and obligations arising out of the fraud.

Business owners should **plan for and understand situations** where they can be held personally liable. When an owner is personally liable for business debts, creditors can attempt to go after the owners’ personal assets, including their home, bank account, investments, and other assets to satisfy a debt. Business owners should adopt appropriate safeguards to avoid potential risks by adequately protecting their assets in their governing documents.

The **governing documents** of a business entity are one of the most important documents to minimize personal liability of business owners. In Pennsylvania, a governing document usually means (a) in the case of a limited liability company, the certificate of organization, or (b) in the case of a corporation, the certificate of formation and its bylaws.



# Contracts Checklist

1. Are your vendor agreements solid and clearly detailed?
2. Is your liability capped in your contracts?
3. Have you clearly described your intellectual property licensing?
4. Have you spent time refining your representations and warranties?
5. Are you using indemnity clauses where permitted?
6. Are you limiting your liability to the fullest extent of the law?

A contract is a **legally binding agreement** between two or more parties that outlines the terms and conditions of a transaction or business relationship. It can be written or verbal, but written contracts are generally considered to be more enforceable as they provide a clear record of the parties' agreement.

We understand that, in today's world, **there are many contracts circulating** around the Internet and we think it's great that people have access to information in ways never before imaginable. However, just because you find a contract on the Internet, that doesn't mean it's legally enforceable in your state; **using boilerplate language can be a great start**, but there may be advantageous terms available to you that you're leaving out because you aren't a lawyer. Furthermore, you must ask yourself if you are prepared to defend yourself should the agreement memorialized in the contract break down between the parties. Typically, lawyers write their own contracts in such a way that they can defend them later in litigation. **In many situations, we are called by clients many years later who used a contract "that worked just fine" that is—until it didn't.**



# Continuity Checklist

1. **Death** – What does the business look like if one owner dies? How does the ownership change?
2. **Disability** – How do the economics of the business work if one owner becomes disabled? How does the work get done?
3. **Divorce** – What happens if one owner gets divorced? What happens to ownership? What happens to management?
4. **Disagreement** – Do you have a plan to protect the value of your business if your owners start to disagree?

The value of your business is tied to many factors, including your ability to keep the business running in the event of your incapacitation or death. Critical to protecting your business's success is a detailed plan in place for **business continuity**.

Often, small businesses overlook the fact that their businesses are, in fact, essentially a product of themselves because they are owned or operated by a small team. In many cases, it's just one person. If you have a family relying on your business for income, there are questions you need to answer about the **longevity** of your business.

If your business is a **partnership**, your business continuity plan should address what would happen if there were an unexpected death, disability, divorce or disagreement involving the partners of your business. We like to cite the 3 D's when asking about continuity:



## Instructions

For each question, answer the question using a scale of 1-10 based on your **current level of confidence** in your business. If you don't know the answer, mark a zero. Ready?

Have you filed your business as an entity separate from your personal affairs (LLC or Corporation)?	
Have you written an operating agreement?	
Do you have a separate bank account for your business?	
Are you operating with the necessary licenses and insurance?	
Based on your industry, are you shielded from personal liability for certain acts performed as a member or manager?	
Are you protecting your intellectual property through trademarks, copyright, or licensing?	
Are you using indemnity clauses and limiting your liability to the fullest extent available by law?	
Are you giving proper representations and warranties?	
Are you shielded from personal liability on any contracts?	
Have you defined confidential information and properly protected it?	
Do your contracts specify what constitutes an event of default?	
Have you planned ahead for what happens if the owner dies?	
If an owner becomes disabled, have you planned for what will happen to business operations?	
If one owner gets divorced, is there a plan in place to address the situation?	
If there's a disagreement or deadlock, do you have the necessary tie-breakers in place?	
	<b>SCORE</b>



## How'd It Go?

Here's a 15-question quiz which aims to help you better understand the strengths and weaknesses of your business risk.

In each question,

- **0 ~ 14:** You're unprepared and leaving yourself open to business risk. You may want to speak to a lawyer as soon as possible.
- **15 ~ 74.** You have a below average level of preparedness and should mitigate your business risk immediately.
- **75 ~ 125.** You're doing pretty well. Most risks are mitigated and you are on the right path.
- **125 ~ 150.** Congrats! You're in the top tier of businesses working to mitigate business risk.





## Get in Touch Today

We hope this guide helped you think critically about how to mitigate your business risk. Regardless of your score, we can work with you to improve your overall business outcomes in drawing on many years of experience.

We started ESQx Business Law to help people to break out of their 9-5 corporate jobs, become financially independent, and make a dent in the universe. As a small firm, we understand the unique challenges of sole proprietorships and small businesses. You need an attorney who is available 24/7 to provide counsel on issues as they arise. We promise to be responsive, attentive, and considerate to your unique needs. Most importantly, we won't treat you like a number. Let's talk today about your needs.

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