

CORPORATE FORMALITIES:

Most of our business clients elect to create a separate legal entity – such as a corporation or a limited liability company -- for purposes of limiting their liability to third parties in connection with their business operations. Business owners are understandably concerned with the ability of creditors to “pierce their corporate veil” and hold them personally liable for the debts and obligations of the business. Illinois case law underscores the importance of following the formalities of a corporation to avoid “piercing the corporate veil.” Business creditors who are not fully paid from corporate assets will frequently attempt to reach the personal assets of the corporation’s shareholders. A creditor will convince a court to “pierce the corporate veil” because the shareholders have not followed the formalities of being a corporation. On repeated occasions, Illinois courts have pierced the corporate veil of corporations that did not follow record keeping formalities, and/or did not honor the corporate formalities in the way it did business. To avoid this, you must hold your business out to customers and the public in a manner that reflects that you are, in fact, a corporation. For example:

- The exact corporate name, as registered with the Secretary of State, should appear on all documents including telephone listings, advertisements, business cards, letterheads, envelopes, signs and so forth.
- All letters and documents should be executed by the business owner using his or her title as an officer of the corporation.
- The financial affairs of the corporation must be separate from personal finances or the shareholders. Personal bills and obligations should not be paid from the corporation's checking account..
- The corporation must actually issue stock to shareholders.
- Minutes of shareholder and director actions must be maintained at least annually. The minutes can be in the form of action by written consent without a formal meeting. Annually in the minutes shareholders elect the directors of the company; the directors in turn elect the company's officers. While some of this may seem administrative and often irrelevant to business operations, it can become critically important to protecting the shareholders' personal assets should they be named as defendants in a lawsuit.

There are exceptions of course. Practicing in the corporate form will not shield the personal assets of doctors or dentists or attorneys from malpractice claims asserted against them. However, claims other than malpractice claims will be limited to the corporate assets if the proper formalities are honored.