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SMALL BUSINESS

Your stay-out-of-court guide

Avoid costly traps that often ensnare small business owners.

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FSB -- Going to court is near the top of the list of dreaded activities for small business owners. But many entrepreneurs say that their efforts to resolve disputes outside of litigation haven't worked, according to a 2005 report by the Small Business Administration. The result? Their companies end up with legal bills from \$3,000 to \$150,000 and have to cut overhead or drum up new sales to compensate.

One of the best ways to avoid the courtroom, say business attorneys, is to take a proactive approach to legal issues. By avoiding some common traps that result in legal hassles, you will go a long way toward protecting your enterprise.

1. Keep partnerships on the right track. Whether you are starting a venture with a colleague or selling a stake in your company to a co-owner, it is essential to formalize your relationship at the outset. Sit down with your lawyer during the honeymoon phase and detail how you will share the responsibilities of running operations, divide profits and resolve disputes.

Make sure you determine what you will do if one of you leaves the firm or dies. You may, for instance, want to make sure that your partner's family members cannot automatically join the firm or unload the stake of the business that they have inherited without your okay. "You don't want them to be able to sell part of the company to a



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partner you can't stand," says Stuart Blake, managing principle of The General Counsel, a Newport Beach, Calif., law firm that provides in-house attorneys to corporations. You should also specify a method for determining how much the company is worth-by, say, hiring an outside appraiser, or using a specific valuation methodology.

2. Safeguard your business strategies. Striking up a partnership with a bigger player can help you expand your customer base or enter a new market. But watch out for land mines. A seemingly friendly corporation could end up trying to muscle its way into your territory instead of making a deal with you. To protect yourself, make sure potential partners sign a non-disclosure agreement, promising to keep any information you discuss secret, and to not use it themselves. No matter how well talks seem to be going, keep as much proprietary information to yourself as possible.

Once you get serious about a deal, you'll need to work with your lawyer to hash out points such as how you will get paid, plans for promoting your product, territorial and geographic limits to where your partner can operate, and how to end the liaison. "With a big company, you're never going to be in a better position to negotiate than when you first start to do business," says Chet Hosch, a partner with Schreeder, Wheeler & Flint, a law firm in Atlanta.

3. Protect your intellectual property. News of innovation travels faster than ever, thanks to e-mail and the Internet. Because of the high cost of waging a court battle over intellectual property, small businesses need to be careful to ensure that no one can copy their valuable ideas, from their technology to their company logos.

You can seek a few types of protection, depending on the type of intellectual property you own. The most straightforward is copyright, which covers books, software, or other original works. You will need to register with the [U.S. Copyright Office](#), a process that takes just two or three weeks and costs about \$30 or so.

For logos, names, and phrases, there is trademark protection. To get that, you must register with the [U.S. Patent & Trademark Office](#). Expect it to take as long as a year and to cost approximately \$1,000. You may be able to establish trademark protection without filing, but it's not advisable.

Then there are the more complicated avenues. If you have a one-of-a-kind recipe or process, for instance, you can try to establish trade secret protection. But be prepared: It is tough to establish. That's because you need to be able to prove you have a well-defined process for keeping the information secret-allowing only certain employees access to it,



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for example, or marking the information personal and confidential. "If you're not taking reasonable steps, the court won't rule in your favor," says Hosch.

Finally, patent protection, for inventions, is the most arduous to get. The process lasts two to five years and is likely to cost you thousands of dollars. And generally speaking, you will need the help of a patent lawyer. But with the tab for many patent suits adding up to seven figures, you will probably look back on any investment you make in preventing one as money well spent. ■