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**QUICK LEGAL TIPS FOR  
COLORADO BUSINESSES**

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*Get It in Writing!*

In an ideal world, people would always do as they promised. In the real world, however, written contracts are usually necessary to ensure that both parties to a business transaction understand their obligations and keep their promises. This is the case regardless of whether the transaction is between “arm’s length” business associates, or between old friends. If a transaction is important to you, always insist on a written contract – and make sure it is actually signed by both parties!

Although written contracts are preferable, oral contracts may be enforceable under many circumstances, but it can be difficult to prove what the terms were. If a written contract is not used for some reason, keep any notes or memoranda that discuss the deal terms (such as letters, emails, etc.) to use as evidence, if needed.

Keep in mind that a written contract is only helpful if it is carefully drafted to avoid ambiguities, and if it accurately sets forth the parties’ understanding. A badly drafted contract can do more harm than good. Contract forms obtained from the internet may be inexpensive and look “official,” but if they are not tailored to your situation they may put you at a serious legal disadvantage.

*Selecting a Contract:  
The Battle of the Forms*

Ideally, you should use your own contract forms to ensure the contract is even-handed and fair. If your customers or vendors insist on using only their contract forms, be wary – these forms are often slanted to favor them and not you. Never sign a contract if you don’t understand what it says, including all of the fine print.

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*Dealing With Customers  
Who Pay Late or Don’t Pay At All*

You are entitled to charge interest and late fees on late payments by your customers. You may also be entitled to recover your attorneys’ fees if there is a dispute and you have to hire a lawyer or go to court. It is a good practice to include interest, late fees and attorneys’ fee clauses in your contracts, invoices and other customer forms and correspondence.

Many other typical contract clauses can also protect you in the event of payment disputes with your customers or vendors. A contract that is silent about payment deadlines, remedies for non-payment and other critical issues simply invites arguments later on. In contrast, a contract that provides a procedure for resolving disputes may help you avoid expensive legal battles in the long run.

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*Can A Mechanics Lien  
Help You To Get Paid?*

A “mechanics lien” is not just for mechanics! In the construction context a mechanics lien is a legal remedy available to general contractors, subcontractors, laborers and suppliers who have not been paid in full for materials or services they provided at a construction site. The mechanics lien can be an effective tool for enforcing payment, but only if statutory procedures are carefully followed. In particular, there are strict deadlines after your last day of work on the job for giving notice and

filing a lien. Everyone working in the construction field should know the basics of Colorado's mechanics lien procedure in order to use it effectively.

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*Documenting Loans  
To Your Company*

In closely-held companies it is not uncommon for an owner to make periodic loans to the company to help keep it afloat. It is important to properly document these loans to ensure appropriate tax treatment, and in some cases to ensure that the owner has priority over any subsequent lenders. Ideally, upon receipt of the loaned funds, the company should sign a promissory note in favor of the owner, with a commercially reasonable interest rate. The note should be secured by the assets of the company and a UCC lien should be publicly recorded.

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*Bad Check?  
Know Your Rights*

In Colorado the recipient of a bad check may be entitled to recover three times the face amount of the check, plus certain other damages, so long as the maker of the check is first given written notice that the check has bounced and an opportunity to make good on the check. The written notice must be carefully drafted to comply with the strict requirements of Colorado's bad check statute, otherwise triple damages cannot be claimed.

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*Covenants Not to Compete:  
Are They Legal?*

Under Colorado law covenants not to compete are enforceable *only* when they are (i) necessary for the protection of "trade secrets," (ii) part of a contract for the sale of a business, (iii) part of a contract to recover an employer's expenses for training an employee who left the employer after less than 2 years, or (iv) part of the

employment contract of executive and management personnel or their professional staff. In addition, covenants not to compete must be limited to a reasonable time and geographic area. Covenants not to solicit are subject to the same rules. Careful contract drafting is critical if you rely on these types of covenants to protect your business.

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*What You Need to Know Before  
Buying or Selling a Business*

Thinking of buying a new business, or acquiring a going concern? Or, are you ready to sell your own company? Whether you are the buyer or the seller, the sale or purchase of a business involves many legal issues, some of which are straightforward, and others of which may be unexpectedly complex.

A business sale may be structured as an asset sale or a stock sale (or, if the seller is an LLC, the equivalent of a stock sale). The choice of structure depends in part on the type of business being sold. Tax considerations also come into play.

While you may think you have a deal once a price is agreed upon, in fact there are usually many other important issues to address, such as payment structure, earn-outs, allocation of risks, indemnification obligations, scope of seller representations and warranties, work-in-process, seller consulting services, and much more. It is important to understand that certain types of contract provisions may be appropriate in one transaction, but grossly unfair in another. Navigating the pitfalls and maximizing the rewards of this type of deal requires experience. The guidance of a skilled and knowledgeable attorney early on in the negotiation process (i.e., even before a letter of intent is signed) is critical to ensuring that your decisions are informed ones.

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