

# It's your business

## Lawyer: Don't wait to be sued

Business owners can save money by forestalling disputes

### Fast track

Small firms have more legal issues than they recognize, including:

- Corporate documents
- Partnership agreements
- Employee policies and handbook
- Confidentiality agreements
- Sales contracts
- Building or equipment leases
- Liens, UCC-1s and trust deeds
- Trade secrets
- Trademarks, copyrights and patents
- Vendor contracts
- Loans and other financial agreements
- Independent-contractor relationships
- Nondiscrimination policies
- Job applications and interview questions
- Employee promotions and disciplinary documentation
- Dispute resolution with employees, customers
- General and product liability issues
- Credit check
- Employment and new-customer background checks
- Protection of client lists and information
- Letters of credit

Some phrases become cliché because they're so true.

That thought came to mind regarding "penny-wise and pound-foolish" when Laguna Hills (now Irvine) lawyer John Baker talked about the typical small-business owner's unwillingness to practice preventive law.



**JAN NORMAN**  
Register Writer

Baker specializes in business law such as liens and trust deeds. Often he feels like a member of the bucket brigade trying to douse raging fires. Legal conflagrations are expensive to resolve and rarely benefit a business.

Wouldn't it be great to stamp out the blazes when they're merely sparks? he thought.

"It's a proactive look at your business," Baker says, "like going to the dentist before the tooth starts to hurt."

So he talked to many business owners about instituting a program of ongoing risk management and early dispute resolution for the myriad legal issues that arise in running a business.

The lawyer spends a few hours each month reviewing a firm's contracts, leases, policies and procedures before they can lead to multimillion-dollar lawsuits and bleeding ulcers.

Great idea, business owners said. Only a handful were willing to pay for it.

Attorneys like preventive law more than entrepreneurs, which automatically makes some people skeptical. There's even a National Center for Preventive Law, [www.preventivelawyer.org](http://www.preventivelawyer.org).

But with everyone becoming more sue-happy, preventive law can make a business more profitable.



YGNACIO NANETTI, THE REGISTER

**ANTICIPATION:** Laguna Hills lawyer John Baker recommends that business owners institute a program of ongoing risk management and early dispute resolution.

Here's how:

### SLOW-PAYING CUSTOMERS

"Many disputes arise because you and your customer haven't come to a clear understanding of the terms of a sale," Baker says. "If you have a sales agreement that's clear, then the customer is clearer about rights of return, when payments are due and what happens if they don't pay."

Also, if a client has no disputes but just isn't paying you, "a letter from an attorney often gets more attention than from a vendor," Baker says.

### ROOTS OF HARASSMENT

"I like to spend time at a client's business, watching how people do their work," Baker says. "If the genesis of sexual harassment is going on, I can put a stop to it."

He also reviews employment agreements and all written policies to make sure they meet standards that will avoid lawsuits if a worker must be laid off or fired.

### THE LEASE YOU CAN DO

Boilerplate real estate leases are written to favor the landlord unless the prospective tenant negotiates changes.

For example, the tenant

may have to start paying rent before a new building is ready for occupancy. He may be forced to move out if the building is sold.

All such issues are up for negotiation, but many small-business owners don't read all that small print in the lease, let alone have an attorney review it.

### LOAN TERMS

Loan documents also carry potentially onerous terms that can be negotiated, Baker says. Many bankers want the business owner to personally guarantee the business loan. Often that can be modified so that the guaranty is reduced over time as the company builds a payment history.

### KEEP A SECRET

A small business may depend on secrets that can't be patented or copyrighted, Baker says. The owner must be sure to conduct business to protect those secrets.

A common example is customer lists.

"Any information that's available to the public can't be protected, and that might include the name and address of your clients," Baker says. "But the name of the decision maker and direct phone number within a large corporation may be

something you can protect legally as long as you take the right steps to keep it secret."

Then if an employee is hired by a competitor and takes his contact database with him, you may have grounds for getting it back, plus damages.

### MEDIATE, NOT LITIGATE

When disagreements arise, Baker tries to steer the parties into mediation.

"They aren't forced to settle, but 85 percent of the time it's successful," Baker says. "Just getting the parties to talk can shorten the time a dispute goes on. Saving time saves money."

"I had one client whose employee defected to a competitor with customer information," Baker says. "I said, 'It's going to cost you \$30,000 minimum to sue. What's your real goal? (Mediation) may get you there faster for a lot less money.'"

All these issues seem simple until they result in legal disputes. Preventive law is a mind-set, Baker says. "Unless you're doing it every day, you don't think about these things."

Jan Norman writes about small business for the Register. It's Your Business runs on Mondays.  
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