

# Don't neglect your legal needs

Some area attorneys cater to small business owners' special circumstances



MAXIMILIAN FRANZ

Attorney Matt Stout advises his small business clients to increase the value on their balance sheets by properly managing intellectual property, licensing and long-term leases on real estate. "The phrase 'The devil is in the details' is absolutely true," he says.

By AMY BURROUGHS

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Mary Cate Claudias is a professional organizer, so one would expect her to have had her business's legal affairs in order. But even she was surprised to learn how much she would rely on her attorney when her business grew faster than expected.

"I needed to make sure immediately that I was taking care of myself and protecting my entity before it got out of control," she said. "Thank goodness I did that when I did, because now it's really crazy. The phone won't stop ringing."

According to attorneys, a host of legal issues can trip up unprepared entrepre-

neurs and small business owners. Between creating a business and planning an exit strategy, owners face legal liabilities in contracts, employment, ownership of work products and protection of intellectual property.

Some attorneys are catering to a surge of small business ownership, driven in part by people creating their own opportunities in a tough job market. Attorneys also are seeing more emphasis on software and other industries based on intellectual property, which need legal protection in the form of trademarks, copyrights and patents.

## Easy documents not always best

Claudias' attorney, Nick Proy of the Proy Law Firm in Finksburg, said about

half of his clients hire an attorney to ensure they do everything correctly, while the other half hire him to fix mistakes after they've attempted to handle things on their own.

"I see clients draft their own contracts because they don't want to pay me to draft a contract for them," Proy said. "But at the end of the day, I'll spend more time sifting through and editing their contract than it would take me just to write the thing myself."

Claudias started Charm City Organizers LLC in 2010 to help individuals and businesses declutter and create organizational systems. She filed her own articles of incorporation and trademark

See Law page 10

documents. But when her business grew beyond what she could handle by herself, she engaged Proy to advise her on hiring help.

"There's a lot of legality that comes with that and I had no idea how to make sure I was protected," she said. "I got great advice from him and my business coach in terms of subcontractor versus employee and the implications that means for me for the IRS."

Her investment paid off: "If I were looking at my calendar and billing out the time it takes me to research and do all that stuff, I'd be losing a lot of money. It's really important for me to essentially outsource some of this stuff and be confident with the fact it is being done right."

According to Proy, a frequent mistake is improperly establishing a business, particularly if owners rely on one-size-fits-all documents. "Anybody can download a form, fill in the blanks, sign it and you've started an LLC," he said. The problem is that boilerplate forms rarely cover the scope of concerns an attorney would address, so owners end up with less control or miss out on tax advantages.

### Partnerships are tricky

Karl Means, who heads Shulman Rogers' intellectual property practice in Potomac, said a growing number of businesses are driven by IP assets, which raise special legal concerns. He pointed to a U.S. Department of Commerce report released in March — the first to measure the span of IP-intensive industries — which states that those industries account directly for 27.1 million jobs and indirectly for another 12.9 million, or 27.7 percent of all U.S. jobs.

Means identified three areas in which owners should protect themselves, but often don't. The first is documenting any partnership, whether it's an actual joint business or an agreement with investors.

"Whatever your relationship is, get it down on paper, because a business divorce, just like a domestic divorce, can be a very messy proposition, particularly if there's a successful business involved," Means said.

Conflict is one cause of rifts, but many factors can threaten a partnership, he



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**Professional organizer Mary Cate Claudias (right) works in the home of client Joanna Lignelli. Claudias hired an attorney when her business took off and she could no longer handle everything on her own. 'I had no idea how to make sure I was protected.'**

said: "Someone could die, someone could become very ill and be unable to participate, some partners just get tired of doing it, some partners run into financial trouble and have to get out, so there are a lot of reasons why you have to plan for those contingencies."

### Always protect IP

Means also urges clients to protect intellectual property before releasing assets to the public.

"If it's successful, you can be absolutely certain that someone is going to copy it or knock it off or try to compete with you in the business," he said.

He described one entrepreneur who was excited to find an overseas manufacturer for a device he invented. According to Means, it would be easy for that manufacturer to produce an extra few thousand copies and sell them.

"Make sure you know who you're dealing with, particularly when you start to have some of these things done abroad," he said. "You lose control very quickly."

### Review work-made-for-hire

The third area that's often overlooked concerns work-made-for-hire agreements, which spell out ownership rights of material produced for the business owner. People often don't realize that if they hire a compa-

ny to create a website, for instance, that company owns the material — not the business owner who hired them.

"There's sort of a stunned look on their face when you tell them, 'You paid this guy \$15,000 for your website, but you realize you don't own a bit of it,'" Means said.

Matt Stout, a Baltimore-based attorney, caters to entrepreneurs who run their businesses from the 30,000-foot view rather than the day-to-day trenches.

"I'm consciously marketing toward that level of entrepreneur who's ready to buy a business, or take the next two or three years to position a business for sale, and then work with a team of advisors to increase the value of the business," Stout said. "Legal contracts, licensing, intellectual property, negotiating favorable long-term leases on real estate — all these things increase value on the balance sheet of a company."

Yet even savvy entrepreneurs may fail to account for personality conflicts, Stout said, and that's one area where an attorney can help them plan ahead.

"That's where you get into a totally avoidable situation, where now all of a sudden, the business itself is at risk because two partners can't get along, often for personal reasons," he said. "The phrase 'The devil is in the details' is absolutely true."