

DIY Legal Websites Can Lead to “Legal Doom”

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The proliferation of do-it-yourself information available on the Internet today can help people do just about everything, from fixing a leaky faucet to diagnosing the pain in your back. And while videos on YouTube that show you how to build a birdhouse or repair your sprinkler system can be invaluable for a do-it-yourselfer, there are some things that should be handled by a professional, as the old saying goes.

One area that has gained in popularity are websites offering discounted, do-it-yourself legal services in such areas as estate planning or business incorporation. On the surface, these online sources seem to be a good idea since they provide legal documents at a fraction of the cost that a lawyer would charge for the same documents. However when you actually look at what these sites provide (and what they don't do) they are far less attractive and in some cases could result in costing you much more in legal fees, costs, time and aggravation.

Most of these online legal websites have a disclaimer that announces that the website is not a law firm and is not a substitute for an attorney, and therefore cannot provide legal advice. So in essence, all that you get from these sites are the forms necessary to set up an estate plan or incorporate your business and some guidelines to use in filling out the appropriate documents. Unfortunately, we are talking about some very important aspects of a person's life, and the ability to talk to a lawyer and get advice from someone who is an expert on the topic can be invaluable when wading through such complicated matters. What is missing, and what is most important, is the planning involved to make sure you have the right legal entity for your particular situation. Obviously, if you knew the intricacies of the various entities available to conduct a business you probably wouldn't need a lawyer to prepare the appropriate documents for your business or estate.

Risks of DIY Estate Planning

When most people think of estate planning they immediately think that only the very rich need an estate plan and that a trust is very expensive. Since they are not rich and only have a modest estate, a standard will seems like a reasonable alternative. Online legal websites often offer a “standard” will that you can fill out for “only \$69” or some other seemingly inexpensive cost. Thus rather than spend a lot of money for a trust, an inexpensive will appears to be the perfect solution. However, the same standard will form can be obtained for FREE from your local library or on our websites at www.bloomlawfirm.com or www.bloomassetmanagement.com. The Michigan Statutory Will is a simple fill in the blank will that is available without any cost.

Although a will is the most basic part of an overall estate plan, it may not be sufficient to protect your assets. The primary disadvantage of a will is probate. Assets that are distributed to heirs pursuant to a will are subject to probate. (Many people falsely assume that a will avoids probate when in reality a will serves as instructions for a probate court.) The decision whether a will is sufficient can be complex. Many factors must be considered, including: value of estate; type of assets in the estate (real estate, business interests and investments); age of beneficiaries; and timing of distributions to beneficiaries. As always, the key isn't just having the form to fill out, it is knowing whether the standard will is all you need to protect your assets and have them distributed based on your wishes upon your death. That generally requires an attorney reviewing your specific situation and recommending an estate plan to meet your needs, which could include powers of attorney or a trust for special situations,

such as funding a grandchild's college education or taking care of a family member who has special needs.

An attorney can also ensure that your documents are executed with the required formalities necessary. Unfortunately there are times documents are invalidated for the simple reason that a signature was missing or as a result of some other technicality. In order for a will (or trust) to be valid it must be executed and witnessed in a specific manner. Failure to do so can result in the will (or trust) being null and void. This is very important since it might be impossible to fix a deficiency if the required formalities were not followed in executing the will (or trust). This means your heirs will need to retain the services of an attorney to remedy the deficiency or the documents won't be valid. In either event this will probably result in costing your heirs additional legal fees and delays in settling your estate.

Setting up a Business Entity Online Has Pitfalls

Another area where many people have been using online legal websites is when starting a new business and setting up the appropriate business entity, such as an LLC (Limited Liability Company) or corporation. Again, filing out the forms to set up one of these business entities is not the hard part, and in fact can be accomplished by downloading the forms from the State of Michigan website. The difficulty is understanding the numerous legal and tax considerations that influence your decision on which particular entity to choose when starting a new business. (For example, what type of entity is best for tax purposes - S Corporation, C Corporation or LLC?) Unfortunately, most people starting a business aren't experts in these important areas, and really need an attorney and a CPA to do a thorough review of their business before they determine which entity makes the most sense.

In addition to which business entity to choose, there are many other legal issues that new business owners need to consider. For example, if you are going into business with a partner, you will likely need a Buy/Sell agreement. If you are working in a competitive industry, you may also want employees to sign a Non-Competition Agreement. These documents need to be drafted with a great deal of care by an attorney to ensure they protect your business, because each business has different needs and issues. Using an online service for these important documents is very risky since each business is unique and a cookie cutter approach to important documents such as a Non – Competition agreement rarely are sufficient to protect you and your business interests.

The basis of a Non-Competition Agreement is to protect your business when an employee leaves to take another job in the same industry or start their own competitive company. Depending on the type of business, what you need to "protect" can be drastically different. For example, one business may determine that its greatest asset is its customer list, so it would have a clause in a Non-Competition contract precluding ex-employees from contacting the company's customers. Other businesses, such as a dentist, may decide it is a geographic area that is an important advantage, and may preclude an ex-employee from opening a competitive business within so many miles of the business.

The key when drafting a Non-Competition agreement is not only to meet the business' competitive need, but also to ensure that it wouldn't be viewed as too overreaching if challenged in court. That could happen if the contract made it virtually impossible for an ex-employee to make a living. If the restrictions are deemed too broad or restrictive by a court the entire agreement can be rendered null and void or modified by a court in a manner that does not adequately protect your interests. Furthermore a poorly drafted non- competition agreement increases the likelihood of your involvement in a lawsuit which will result in incurring significant legal fees.

Certainly, online legal websites have some benefits. Not everyone has the money to hire an attorney to develop an estate plan or form a business entity. But online law sites aren't free, and the potential that drafting an incorrect will or forming the wrong business entity will cost you more money in the long run is a very real concern.

As always, the Internet has given us an amazing wealth of information at our fingertips. But as with anything you do on the Internet, it is always good to have the motto “buyer beware.” The same can be said about online legal websites.