

BUSINESS ADVISOR

Everyday Legal Guidance for Business Owners, Executives, and Entrepreneurs

Tips for
Running a
Business

Advantages of
Doing Business
in Nevada

Online
Reputation
Management

Discrimination in
the Workplace

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WELCOME

Hutchison & Steffen presents Business Advisor, a collection of articles of interest to business owners, executives, and entrepreneurs. The articles were authored by the Firm's attorneys, and as you will discover, they cover a wide range of legal and business matters.

We recognize that business people are (and should be!) focused on running their businesses, and that planning for and responding to legal issues is not always a top priority. Further, we understand that managing costs is a primary objective. We, therefore, offer a full range of high-quality legal services to help business leaders manage legal issues in a cost effective manner. We understand that lawyers must be "value-added" partners when assisting clients with legal challenges.

Also, without question, every business faces challenging legal matters. Determining who to trust as legal counsel can be daunting. Hutchison & Steffen's mission is to assist business owners, executives, and entrepreneurs with everything from routine legal guidance to complex transaction or litigation matters. In doing so, we aim to free business leaders from worrisome legal matters so they can focus on improving their business objectives.

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A silhouette illustration of a business meeting. On the left, a man in a suit stands and points at a document. Three people are seated around a long table, engaged in discussion. On the right, another person is seated, looking towards the group. The background features a series of horizontal bars of varying lengths, creating a staircase-like effect.

10 Day-to-Day Tips for Running a Business

By John T. Steffen

1 Watch your browsing time. Most of us like to read online news, Web sites, blogs, and message boards. This normally soaks up a lot more time than we realize and is rarely productive. Keep Internet browsing to a minimum for both you and your employees.

2 Manage e-mail. E-mail can be a huge problem. Most of us receive dozens of e-mails a day. Make sure you have working filters to stop unwarranted e-mails and make sure a business policy is in place to limit personal, unwarranted, or repetitive e-mails among employees.

3 Daily networking. The more meaningful contacts you make, the more your business will grow.

It is essential that you maintain old contacts and make new ones each day.

4 Customer service. Your clients and customers need to feel that you appreciate them. Don't be rigid. Especially in this economy, you may need to alter or change price structures, methods, and timing of communications, etc., to meet customer needs.

5 Make it enjoyable. Studies have shown that businesses are more likely to succeed if there is a positive work environment in place. You will never keep valued employees if they are treated unkindly or unprofessionally.

6 Cashflow. Don't assume people will pay on time, because they typically don't. Make sure bills are sent out consistently on time and that each customer or client is clearly aware of how your billing works. Have a late payment procedure in place. Finally, don't continue to do work for customers who do not pay their bills — cut your losses early.

7 Keep up on technology. The advances in affordable technology and software have revolutionized how we operate our businesses day-to-day. Find the technology that can help you improve operations and free up time for key employees.

8 Competent, loyal, and cheerful management. Put key people in charge who are organized, competent, and loyal. Make sure they also have the skills to maintain a positive work environment.

9 Outsource when possible. Most businesses have learned that outsourcing certain tasks can save time and overhead.

10 Keep your books and finances in order. Make sure your records are always up-to-date and in order. Make sure sufficient funds are reserved for payment of bills, taxes, benefits, or needed business investments. Always make sure the business operates within its means.



JOHN T. STEFFEN
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PROTECTING YOUR INTELLECTUAL PROPERTY

By Joseph R. Ganley

Philosopher John Locke said, “Every man has a property in his own person. This nobody has a right to, but himself.” Creations of the mind are but an extension of the self, and, according to Locke, are the property of each individual. As your business grows, these creations of the mind will be crucial to your success and will need protection. In today’s technology-centered world, it’s likely that your business’ intangible assets are far more valuable than your tangible assets. Your intellectual property, any creation of the mind, needs as much, if not more, protection than any other part of your business. These “creations of the mind” include creative works, inventions, symbols, names, images, and designs used in commerce.



JOSEPH R. GANLEY
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The first step in protecting intellectual property is legally ensuring the rights to your creation. There are three main types of legal protection, each appropriate for different types of creations:

PATENT: A patent grants you property rights for an invention. The patent guarantees you the right to exclude others from making, using, or selling your invention.

COPYRIGHT: A copyright is just that – the right to make copies of something. A copyright protects works of authorship as fixed in a tangible form of expression. Typically copyrights are only used for creative works such as photos, graphic designs, drawings, music and sound recordings, manuscripts, plays, movies, or other performance arts.

TRADEMARK: A trademark protects the words, phrases, or logos used to identify or mark the source of what your business offers.

Obtaining the exclusive rights to your intellectual property can take some time—anywhere from 2 to 15 months. In the meantime, continue developing your business, but be extremely cautious that your unprotected assets aren’t leaked. Security should be a priority. Invest in digital protection of your files and systems, and always keep secure copies of your work. Also, consider having your employees sign non-disclosure agreements, which prohibits them from sharing vital information about your business with outsiders.

Intellectual property laws give people an incentive to create. Your creations fuel your business and are vital to its success. Be sure to secure your intangible assets as thoroughly and early as possible. Protecting intellectual property is crucial to your business’ achievements.

Preserving Evidence in Anticipation of Litigation

By Timothy R. Koval

Most businesses have document-retention plans in place for tax preparation, financial audits, general record-keeping, and the like. However, many businesses lack such plans if civil litigation arises.



The potential legal consequences are significant for failing to have plans to preserve documents when a business faces the prospect of litigation or is involved in litigation. The consequences can be particularly dire if documents are destroyed that could have been used as evidence in the case. The law refers to such destruction as “spoliation” of evidence. The destruction of evidence, whether intentional or not, may result in other negative consequences.

Under Nevada law, if evidence is willfully suppressed or destroyed, there is a rebuttable presumption that the evidence would be adverse if produced in litigation.¹ This presumption requires proving that the evidence was destroyed with the intent to harm another party in the case.² This means that, unless the other party shows that the destroyed evidence is not harmful to either its claims or defenses, the court or a jury will presume that it is harmful and decide accordingly. Fortunately, most businesses do not engage in the type of conduct that would trigger this presumption.

However, without careful planning and attention to document-retention policies, a business may still fall victim to spoliation. If evidence is negligently lost or destroyed, or intentionally lost or destroyed without intent to harm another party in the case, there

may be a permissible adverse inference that the evidence is unfavorable to the destroying/misplacing party.³ The Supreme Court of Nevada explained:

[The] sanction [of an adverse inference] should be available even for the negligent destruction of documents if that is necessary to further the remedial purpose of the inference. It makes little difference to the party victimized by the destruction of evidence whether that act was done willfully or negligently. The adverse inference provides the necessary mechanism for restoring the evidentiary balance. The inference is adverse to the destroyer not because of any finding of moral culpability, but because the risk that the evidence would have been detrimental rather than favorable should fall on the party responsible for its loss.⁴

The bottom line is that a reasonable policy for retaining documents in anticipation of civil litigation provides a means for a business to preserve crucial evidence in support of its claims or defenses. A document-retention policy that is defined and implemented will also prevent a court or jury from holding destroyed or lost evidence against the business at trial.

[1] See Nev. Rev. Stat. § 47.250(3) (2011).

[2] See *Bass-Davis v. Davis*, 122 Nev. 442, 448 (2006).

[3] See *id.* at 448-49.

[4] See *id.* at 449, citing *Turner v. Hudson Transit Lines, Inc.*, 142 F.R.D. 68, 75 (S.D.N.Y. 1991).



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Risk Management

By Kumen L. Taylor

Risk is inevitable. When starting your own business, there's always a chance of success or failure. As a small business owner, you need to analyze the risks your business might encounter and prepare accordingly. There are some common or general risks that most small businesses face. These are also risks that may affect your business directly or may affect a supplier or customer.

FORCES OF NATURE:

Research your geographic area. What danger may your business face? Floods, power outages, and earthquakes could be disastrous to your business operations if you're not prepared. Address these risks through disaster training and proper insurance.


CRIMINAL BEHAVIOR:

Theft or deceit can negatively affect your business on many fronts. The illicit actions of your employees, your suppliers, or your distributors can lead to litigation, which will adversely affect management's focus on business matters and may dramatically reduce business'



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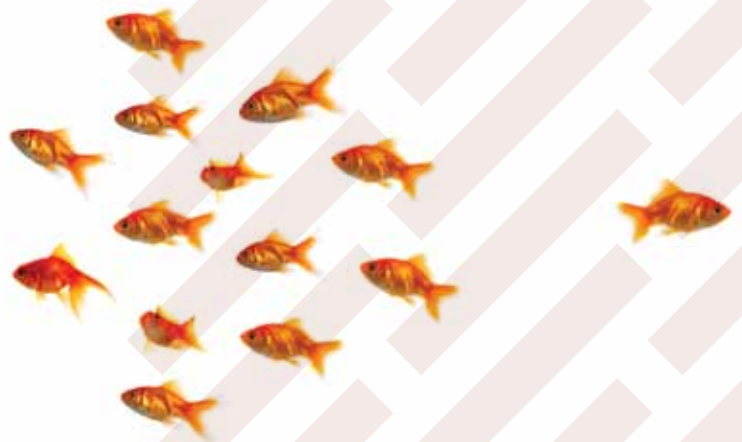
growth. Prepare by requiring business ethics and harassment training as well as written, clear policies on these subjects and the means for employees to report to management any improper behavior.

BANKRUPTCY:

Unfortunately, succeeding or failing at business isn't entirely in your hands. And, should the business fail, you still will face financial responsibility. This means paying debts or, if you are unable to do so, declaring bankruptcy. Neither option is ideal. Should you declare bankruptcy, your financial reputation will be tarnished. Do everything within your control to avoid it.

LOSS OF INDEPENDENCE:

Another option if business fails is to sell ownership of your business or assets to a stronger business entity, perhaps a competitor. This may save you from financial ruin, but cost you independence and ownership. This type of risk must also be considered.



You are obligated to prepare for these risks. Your duty is to analyze any reasonably foreseeable risk and minimize the possibility of its occurrence. Of course, it's impossible to predict all events that may put your business at risk, but consider the following:

1. Potential Risk: It's unreasonable and impracticable to spend all of your time examining every possible risk. The list is endless. But you should consider realistic and probable risks.

2. Magnitude of Harm: After identifying probable risks, determine which aspects of your business could be adversely affected. Be exhaustive.

3. Available Alternatives: Evaluate what you can do now to minimize exposure to the potential risks. And if the event nonetheless happens, determine how you can minimize the damage, respond to the event quickly, and resume operations.

Proper insurance and risk management go hand-in-hand. The more you safeguard your business, the greater the opportunity to succeed.

Your duty is to analyze any reasonably foreseeable risk and minimize the possibility of its occurrence.

It's been over three years since the Patient Protection and Affordable Care Act ("PPACA") was signed into law, and a number of its provisions have gone into effect. While there are still forces working for the repeal of what has become known as "Obamacare," it would be wise for small business owners to learn and understand how the law may affect them and their businesses.

The manner in which the PPACA can affect small businesses depends on the number of its employees. If your business has average firm wages of \$50,000/year or less and 25 or less full-time employees (part time workers count as one half of a full-time employee), then the law may be quite advantageous to you. If you pay at least 50% of your employees' health insurance premiums, then your business may receive a tax credit worth up to 35% of premiums paid for small business employers. In 2014, the maximum credit will increase to 50% of premiums paid for small business employers.

Depending on the circumstances, you may be able to carry the credit back or forward to other tax years, claim a business expense deduction for premiums in excess of the credit (counting both as a credit and deduction for employee premium payments), or may be able to receive credit as a refund.

Businesses with a minimum of 50 employees are required to provide "affordable" insurance to their employees or pay a penalty. To be considered affordable, health insurance must pay for at least 60% of health expenses, and require the employee to give up no more than 9.5% of the employee's family's gross income. Businesses must also provide an "essential health benefits package," which is determined by individual state policies. Each state can

choose the specifics of this package, but at a minimum, it must cover the following areas of care:

- ambulatory services
- emergency services
- hospitalization
- maternity and newborn care
- mental health and substance use disorder services
- prescription drugs
- rehabilitative services
- laboratory services
- preventive and wellness services
- pediatric services

Nevada Health Link was created by the State of Nevada to help employers compare and purchase health insurance plans.

Though some aspects of PPACA are already in effect, a majority of the law will become effective by 2014. The penalties for non-compliance are determined by a complex formula and a number of factors. For example, non-compliant businesses will be charged a penalty of at least \$2,000 for each employee, with the first 30 being exempted.

For some small business owners, it still remains to be seen whether PPACA is a burden or benefit to them. In these times of economic uncertainty, what is certain is that PPACA is here for the foreseeable future, and the effect it has on your business depends largely on how small your business really is.

THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

By Jessica S. Taylor



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Dos and Don'ts of Insurance Coverage

By Kumen L. Taylor
& Scott A. Flinders

Starting a small business always entails risk. Accidents happen and can't be predicted. As you make plans for your business ventures, it is crucial to protect yourself and your assets from day one. While paying the vast and varied bills of a new business, it can be awfully tempting to do anything and everything to save a penny. But it only takes one accident to crush your business. Here are some tips, some "dos" and "don'ts" of insurance coverage for your small business:

Dos:

1 Choose a provider with caution. Shop around. Research the history of the provider to determine if it has dealt with businesses like yours in the past.

2 Read carefully. Take a long look at the proposed policy. Does it cover everything you need? Ensure that no loopholes may withhold protection from your business.

3 Purchase excess. In the long run, it's generally cheaper to secure an "umbrella" agreement than a "bare-bones" policy.

4 Acquire excellent health insurance. This is a great way to attract and motivate a talented workforce. Your employees will be far more loyal. But keep in mind, if you use independent contractors, require them to have their own insurance to cover accidents.

5 Be entirely up front. Inform your insurance agent of changes and improvements to your assets, employees, or anything you've insured. The more details you give

your agent, the more protection you'll receive.

6 Protect your cash flow. Purchase insurance to cover embezzlement or theft by employees. A large cash loss can be catastrophic for a small business. Protect yourself.

7 Annual review. Review your business with your agent annually. Your business needs can change from year to year. Your policy may need to be updated to meet those changes.

8 Consider both commercial and auto coverage. If your business owns and uses any kind of automobiles, you will probably need separate coverage for your autos.



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Don'ts:

1 Cut corners. Quality insurance, though more expensive from the outset, will save your company untold sums in the case of an incident.

2 Reduce training. Spending money teaching employees how to avoid an incident is similar to paying for insurance; it can save you a fortune in the long run. Safety, sensitivity, and harassment training are essential.

3 Buy from an insurance agent who won't tailor a policy to your needs. A good agent will want to protect your business. Again, you mustn't view protecting your business as a tax, but rather as a benefit.

4 Exaggerate the extent of your damages. If you need to collect on your policy, be honest and clear about your damages. Any kind of embellishment or deception is insurance fraud and will cost you far more money in the end.

5 Confuse business with personal. Don't depend on employees' personal coverage to protect against vehicle damages if they drive on behalf of the business. Also, if you work from home, don't assume your homeowner's policy will cover your assets. Most homeowners' policies exclude business coverage unless you have added an endorsement to cover it specifically.

Assessing and Establishing an Online Reputation

By Mark A. Hutchison

In the past 10 years, the Internet has gone from being a rather novel and convenient tool, to being seemingly the axis around which the entire civilized world revolves. People in nearly every industrialized nation have access to the Internet in some form or another. Internet access has become a necessary tool for anyone who wants to serve some meaningful function in today's society. Contrary to what popular singers and your grandmother might say, the Internet is here to stay, and cannot be ignored.

The Internet has revolutionized business and commerce. Through social media, search engines, and online shopping, customers can read reviews of products and services, discover new businesses, and recommend businesses to their friends. Businesses, in turn, can spread knowledge of what they do, build positive reputations, and directly communicate with their customers through the Internet.

Because the Internet has become such an important part of business, ignoring your online reputation can have potentially devastating results for your business. One needs only to perform a quick Google search to find numerous stories of businesses that have failed because they failed to appreciate the importance of their online reputation. The anonymity that the Internet offers allows a single individual to write reviews, create hate sites, and write nasty blog posts about your business, all under different usernames and identities.

The first step to insure that your business has a positive online reputation is simply to learn what information about your business is out there. It is prudent to discover such information through a search of your business on all of the major search engines (Google, Bing, Yahoo, etc.). Be aware, however, that many popular search engines personalize your searches by processing things such as browsing history. Before beginning your search, be sure to log out of your account or to disable personalized search results. Also



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perform multiple searches, including different information about your business (your name, business name, products, employees, etc.), and use alternate spellings.

From the search results, determine how much effort is required to manage your online reputation, and whether it's worth worrying about at all. Outspoken Media, a company that helps businesses manage their online reputation, suggests creating a spreadsheet for each search and listing the first 30 results for the search. For each result, record whether it is positive, negative, neutral, or unrelated to your company. If most results are negative, you have a problem. If most results are neutral or unrelated, you need to build a positive reputation. If a significant majority of results are positive, your online reputation is in good shape and you need only to monitor it regularly.

Assuming most results are neutral or unrelated, the first step to building a positive reputation is simply let-

ting people know that your business exists. If you haven't done so already, you should purchase as many domain names for your business as possible. This prevents other Web sites, businesses, or individuals from stealing potential customers. It is also wise to purchase any negative domain names you can identify, which potentially could be used to create hate sites.

You next should establish a presence on nearly all major social networking sites. Each Web site can represent hundreds or thousands of potential customers, so you don't want to miss these opportunities. As with domain names, if you don't use your name for your business, somebody else will. After establishing your business on many different social networking sites, you should build your actual social network. Associate yourself with credible individuals in your industry and in your field. Follow, friend, or 'like' any page or individual that may provide an opportunity to reach new customers.

To conclude, online reputation now more than ever before plays an important role in the success or failure of a business. Nearly all businesses can find some way to take advantage of the Internet and social networks to create a positive image. You must regularly monitor what is being said about your business, and ensure that other people are not using the anonymity of the Internet to ruin your business. In the absence of an online presence, begin today by creating a positive reputation on Web sites and social networks, which will lead to customers who will grow your online reputation and business.

Sources:

http://www.nytimes.com/2009/07/30/business/smallbusiness/30reputation.html?_r=2&ref=legalissues

http://www.pcworld.com/businesscenter/article/258159/how_to_manage_your_business_online_reputation.html

<http://thesocialmediaincubator.com/5-keys-to-managing-your-business-online-reputation/>

<http://outspokenmedia.com/guides/orm-guide/>

Corporate Formalities

By Cami M. Perkins



Many small businesses fail to appreciate their own fiscal and legal significance. This can lead to careless management of daily business operations, including finances, recordkeeping, insurance policies, and corporate leadership. Adhering to basic corporate formalities empowers your small businesses to deal properly with problems that often arise, but are unanticipated by most small-business owners. These problems can include financial hardships, whether caused by business struggles, unexpected liability, or even owners' disputes.

One of the primary purposes for establishing a business entity is that the law views the business and the people who own it as completely separate legal bodies. The entity is essentially an artificial person, provided the owners of the entity have followed the appropriate corporate formalities. This concept is commonly referred to as the "corporate veil." In situations where the business faces liability for debt, lawsuits, insurance claims, or other financial obligations, this veil is vital for protection from the owners' individual liability. Observing the simplest of practices, even if slightly inconvenient, could save significant money and personal liability. Regardless of the size of your business, the shareholders, board of directors, and officers need to be protected.



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Business actions must be distinguished and documented clearly or you risk "piercing" the corporate veil. Essentially, the court may find that the business and the owners are really one in the same and the business is an "alter ego" of its owners. Maintaining the legal protection of the corporate veil should be a priority for the business. Consider implementing the following:

1 Ensure that corporate formation documents are complete, and include the proper operating documents, which may include bylaws for a corporation or an operating agreement for a limited liability company.

2 Hold all corporate meetings openly and keep detailed records, even if the only attendees are a husband and a wife.

3 Hold meetings regularly.

4 Separate corporate and personal funds. This might get complicated, but it is absolutely crucial.

5 Carry insurance that is reasonable and appropriately aligned with the company's risk. Don't buy a bare-bones policy just to save costs.

6 Ensure that every officer or director has a function. These responsibilities should be well documented.

If the "corporate veil" is pierced, the court can hold the officers, directors, managers, and even owners personally liable for business mistakes or failures. If you have any concern regarding properly forming your business and ensuring that it observes the proper formalities, meet with a business planning attorney who can create the proper documentation, review your agreements and records, and strengthen your legal position.

NON-COMPETITION AGREEMENTS

By Joseph R. Ganley

Non-competition agreements have become so ubiquitous across so many industries throughout Nevada that they are familiar even to the layperson working in hard-back manufacturing jobs. Non-competition agreements – commonly called “non-competes” – are, at their core, restraints on trade; they are written contracts prohibiting a person from working in a particular field for a specific period in a specific geographic area. Because non-competes are restraints on trade and because our American systems of democracy and capitalism value highly the ability to work and self-reliantly earn wages, non-competes garner special attention from the judicial system. Nevada law mandated a heightened scrutiny of non-competition agreements to ensure that they are not too restrictive on the employee, but, at the same time, reasonably protective of the employer. The courts, therefore, conduct a balancing act of these two important, competing public policies. Hence, non-competes are valid and enforceable in Nevada if reasonable in temporal and geographic scopes.

Nevada law even encourages an employer looking to protect its intellectual property, trade secrets, and employee investments to use non-compete contracts. Nevada courts have recognized the validity of non-competes for decades with clear Nevada Supreme Court decisions since the 1960s, and thereafter with codification in statutory law by the Nevada legislature. The best and most effective non-compete is one that tailors its restrictions to legitimate business interests that balance the employer’s ability to protect its valued property versus

the employee’s ability to work elsewhere in the industry. For instance, if a company’s business is confined generally to five-square miles, a restriction that prevents an ex-employee from working anywhere in Nevada will be considered too broad and struck down (or revised by the court). But, if the contract was limited to five-miles for a reasonable period (e.g., one-year or so), then the contract has a greater chance of judicial enforcement.

Some of the primary incentives companies have for using non-competes is to protect the training investment a company expends on its employees and/or the trade secrets the company has within its organization. These are the types of assets that if lost to a poaching competitor or a rogue ex-employee could severely damage or jeopardize a company’s existence. One of the ways to help protect against loss of these assets and their high value is to have employees sign non-compete agreements to, among other things, limit their disclosure of the company’s confidential information, limit their ability to join a competitor (or start their own competing company), and limit their ability to solicit other employees from leaving the company’s employ. The non-competition agreement is not infallible, but can be a useful tool for employers seeking to protect company assets.

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ADVANTAGE NEVADA

As a young lawyer, I boarded a flight out of Reno. To occupy my time, I began to study using flash cards I had prepared. A stewardess asked what I was doing and when I explained to her that I was a lawyer and was studying Nevada's laws of evidence, she

replied that she didn't think Nevada had any laws. When I asked what she meant by that, she referred to easy divorces and the state's allowance of gaming. My explanations did not seem to change her attitude toward my state. However, within a very short time after that encounter, California and other states adopted "no-fault" divorce, which was hailed as new and enlightened social policy. Likewise, within a short time, other states began to engage in gaming by way of lotteries, albeit with the state as the casino owner. Again, this was hailed as new and enlightened social policy. No one seemed to notice that Nevada's laws had all along provided the advantage of enabling people to conduct their lives and businesses with the least intrusion necessary from the state.

Nevada law provides a welcoming, user-friendly, and flexible business environment. This environment begins with Nevada's full complement of available business entities. There are legal provisions for traditional corporations, close corporations, sole corporations, private corporations, and non-profit corporations. Partnerships, including limited and family limited partnerships, are available. Nevada also provides the more modern form of a limited liability company. Professional corporations and associations are available. Finally, a simple and direct path is provided for a corporation formed in another state to qualify to do business in Nevada.

Nevada also provides ease of formation of business entities. The Nevada Secretary of State has implemented a Nevada Business Portal, which provides a one-stop shop, streamlining registration and purchasing of required licenses and a user-friendly wizard to guide one through all the necessary steps of formation, all of which can be purchased across government agencies by one payment.



Ease of business formation includes the ability to issue stock in exchange for capital, services, personal property, or real property, which includes leases and options to purchase real property. The directors of a corporation are allowed to conclusively determine the value placed on such assets.

However, a warning is in order: providing such flexibility and ease of formation doesn't mean that a novice will choose the right business entity or engage in the right conduct to maximize the impact of the opportunities available. Nevada law provides incredible flexibility in how Nevada business entities can be structured in ownership and control. There are sophisticated arrangements available for your business structure, which are far beyond the scope of this article. So, as a business owner you can get started, but as soon as you can spare the change, consult a really good business lawyer. With professional help, there are opportunities for significant asset protection in the choice of business entity and structure.

Nevada's tax policy toward business is simple. There is no corporate income tax, no tax on corporate shares, no franchise tax, and low annual fees. For the business owner and employees, there is no state personal income tax and no inheritance, gift, or estate tax.

Nevada's sales and property tax rates are comparable to other states.

Additionally, Nevada provides the best possible remedy for one of the most troubling risks any business is exposed to – costly and protracted litigation. Nevada has created business courts to provide early and firm case management and to assure that disputes are brought to a timely resolution. Mechanisms for facilitating settlement are readily employed. These measures minimize the risk of business disruption and provide a basis for rational predictions of how a case is going to progress and be resolved.

To the forward-looking business person, one of the most important considerations surrounding the advantages listed above is the stability of the attitudes reflected in Nevada's business policies. These attitudes are dyed in the wool of the collective psyche of the people of Nevada. They were there at the formation of this state and have endured through the years since. Thus, a business choosing to locate in Nevada has a rational basis for predicting that these policies will continue in the future.

Finally, a brief word about Nevada's living environment. The arts and entertainment flourish here, provided, in part, by the people employed in the gaming industry. The gaming industry

contributes to the availability of dining and entertainment experiences above or on a par with any community in the country.

If you are an outdoors buff, Nevada is the best. Eighty-seven percent of the land surface of Nevada is public land. Living here is like living in a national park. The opportunities for hunting, fishing, boating, prospecting, or just exploring are virtually unlimited. In both the major cities in Nevada, one can go from city level to ski level in about 30 minutes. Golf courses abound.

Nevada has about 70,000 wild horses and burrows spread across this land, which are protected by the Wild and Free Roaming Horse and Burrow Act. Think of Nevada's legal and cultural environment as an over all Wild and Free Roaming People Act. It's just really fun to live here!

Glade L. Hall serves as an Of Counsel member to Hutchison and Steffen. He has years of experience in business and commercial litigation, eminent domain, and administrative law, and served as Deputy Attorney General for the Nevada Public Service Commission. He also served on the Board of Litigation for the Mountain States Legal Foundation. He can be reached at 775.324.6447.



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Alternative Dispute Resolution Basics

By Erin Lee Truman

Alternative Dispute Resolution (ADR) is a process of settling legal challenges or claims without utilizing the traditional judicial system. Businesses typically utilize several forms of ADR when attempting to both avoid or resolve litigation. These forms of ADR include arbitration, mediation, and private trials. The ADR process involves opposing parties coming together with a neutral third party – arbitrator, mediator, private judge, or private jury – to resolve their conflict.

ADR allows the parties to play a more integral role in resolving their differences and can potentially allow them to maintain a positive working relationship. Businesses should consider ADR if settlement negotiations are stalemated or not advancing in a constructive way. There are many benefits to ADR. The processes are generally less formal, less stressful, and more confidential than traditional court proceedings. ADR also encourages the parties to actively participate in the process of resolving their disputes. Let's consider some differences between the most commonly used forms of ADR:

ARBITRATION: The opposing parties select an impartial third party or parties – an arbitrator or panel of arbitrators – to determine the outcome of their dispute. Parties can also mutually agree to parameters or rules for their arbitration. Then, they present legal evidence and arguments to the arbitrator or panel in a more relaxed environment than a traditional court proceeding. Arbitration hearings most often take place in the conference room of a legal office with all parties and counsel present. The neutral's decision is legally binding and a written decision is provided to those



involved. Another advantage to arbitration is the speed in which it can be accomplished. Arbitration can be completed in a few months. This allows the parties to save money on legal fees and costs, compared to protracted litigation in court.

MEDIATION: The parties voluntarily enter discussions with a neutral third party – the mediator – who facilitates the parties’ communication so they can work to resolve their differences. Unlike arbitrations or trials, the parties retain complete control over the outcome of their dispute in mediation. The mediator does not decide the case, but helps the parties explore a variety of outcomes. Parties can privately arrange a mediation at any point during a case, which is postured for arbitration or litigation. If the mediation ends with a settlement contract, then the parties are bound to it. If the parties are unable to reach an agreement, they proceed in the judicial system. Mediation costs far less than litigation and it increases the probability that the parties will be satisfied with the final result. Business relationships are more likely to stay healthy given the process’ collaborative nature.

PRIVATE TRIALS: The opposing parties submit their claims or causes of action to a private judge and/or privately selected jury. This form of ADR is less commonly used, but is a tool that can be effectively employed in cases that involve particularly sensitive or confidential information or that require specialized knowledge or experience in the decision making. This forum is similar to a trial in the judicial system, in that it has a judge and the option for a jury. However, private trials enjoy privacy and confidentiality not available in open court; all involved can be required to sign a confidentiality agreement. The parties can agree on the experience or expertise of the judge or jury. The involved parties can also create many of the rules of a private trial. Another advantage of a private trial is the shortened time to reach a courtroom. The parties determine when their case is submitted for trial, rather than waiting years for an available trial date in the traditional judicial system.



ERIN LEE TRUMAN
OF COUNSEL

What If Your Vendor or Supplier Files Bankruptcy?

By Fredrick P. Waid and Jeffrey R. Hall

**File a proof of claim?
Are you secured?**

Have you received any payments from the debtor in the 90 days prior to its bankruptcy filing? Do you intend to still do business with the debtor?

If a customer files bankruptcy, you will likely receive a notice from a bankruptcy court that provides you with certain information and deadlines. For the general creditor of the bankrupt entity, the first thing you will need to do is file in bankruptcy court a proof of claim. A proof of claim is a document stating what the debtor owes you. This preserves your right to a distribution from the debtor's estate if a distribution is made. Without a proof of claim, you may not receive a distribution even if you're entitled to one. Preparing and filing a proof of claim is an inexpensive and simple task, but without one, you may lose substantial legal rights.

If you are a vendor or supplier to a company that files for bankruptcy, there are some immediate questions to ask. Assuming there are accounts outstanding, the first question is whether you

are a secured or unsecured creditor. A secured creditor has an agreement with the debtor that some type of property will serve as collateral for payment of an outstanding debt. The secured creditor has more rights in bankruptcy and stands a much better chance of getting paid. The unsecured creditor, on the other hand, will typically get cents on the dollar on a pro rata basis. The most important steps to maximize recovery from a bankrupt customer should be taken before the customer files for bankruptcy. Reviewing your business practices with legal counsel can be the difference between full recovery from a bankrupt customer or no recovery at all.

If your company received payments for outstanding debts from a debtor just before it filed for bankruptcy, your company may be the subject of a lawsuit. As unjust as it sounds, the U.S. Bankruptcy Code allows a debtor to seek the recovery of a payment made by the debtor to a creditor within 90 days before fil-

ing for bankruptcy so that these monies can be distributed pro rata to all creditors. These payments are referred to as "preferences" under bankruptcy law. There are exceptions to this rule, and you should consult counsel if a debtor in bankruptcy seeks recovery of a payment made to your business. Also, consulting counsel regarding the exceptions to the preference rule can lead you to conduct business in a manner that reduces your exposure to preference claims altogether.

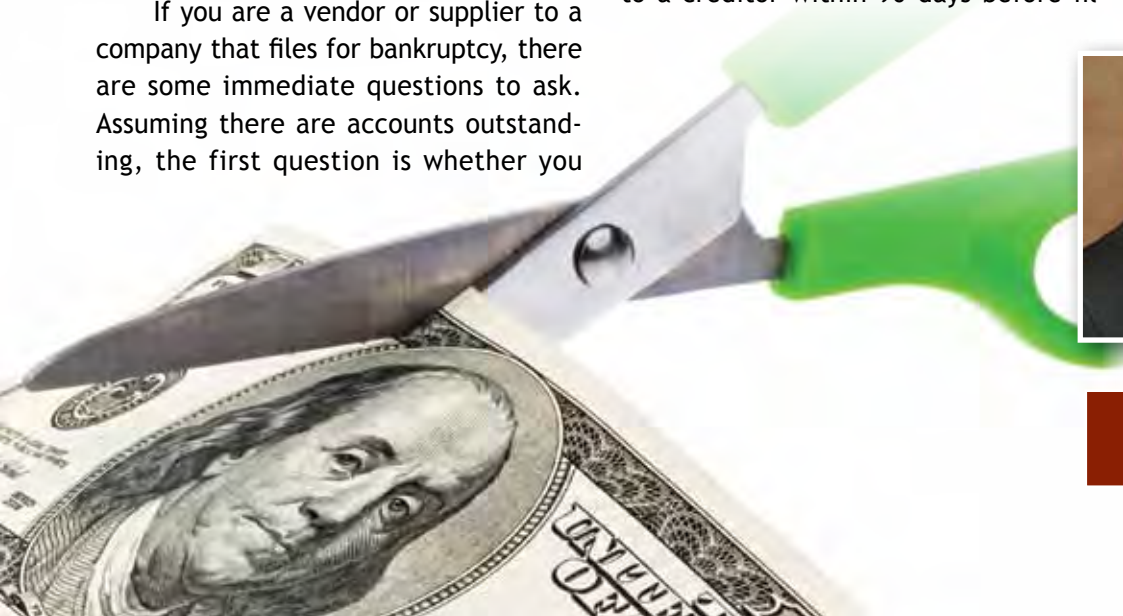
Finally, there are many questions to ask if you intend to continue doing business with the debtor. You can't simply stop doing business with the debtor if a contract remains in place. The debtor may also want to continue doing business with your company even without a contract. Consult bankruptcy counsel in these scenarios because there are many factors to consider in making a decision that best suits your business and protects its financial interests.



FREDRICK P. WAID
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In a world where lawsuits run rampant and even the most seemingly benign act (or failure to act) can lead to a litigation nightmare, it is increasingly important for employers to know how to conduct themselves in a way that will insulate them and their companies from liability. Unfortunately, the plethora of law on the books governing employer conduct (at both the state and local levels) can be substantially overwhelming. Fortunately, the laws themselves are pretty much “common sense” and are generally designed to promote fairness and equality in the workplace. The following tips will help you and your company guard against unnecessary litigation.

Title VII of the Civil Rights Act of 1964 generally prohibits discrimination in the workplace. “Discrimination,” refers to disparate treatment of a person because of their race, religion, sex, pregnancy, nationality, age, color, or disability. Employees who fall within any of these groups are part of the laws’ “Protected Class.” Nevada is an “at will” employment state, which means that employers generally have the right to hire and fire employees for any reason, or no reason at all. However, if the employees can prove that the company fired them, or took other adverse action against them because they are a member of a Protected Class, then they may have a basis for filing a lawsuit. If the employee comes forward with this type of allegation, the burden then shifts to the employer to articulate a non-discriminatory reason for the disparate treatment. Imagine, for example, the employee who wants to

express his religious preference by wearing a turban to work. Your company, however, is involved in construction and there is a company policy that all workers must wear hard hats while on construction sites. Your employee refuses to wear the hard hat, and is terminated. In this instance, you would be able to articulate a legitimate, non-discriminatory reason for the termination.

A good way to protect yourself as an employer is to implement an “employee handbook,” containing, among other

Discrimination in the Workplace

By Patricia Lee

things, the procedures that employees should follow if they believe they have been a victim of discrimination. Establish a chain of command for reporting acts of discrimination, including alternative reporting options if the employee believes he or she is being discriminated against by his or her direct supervisor. Next, investigate the claim. Interview the alleged offender and any other person who may have witnessed the discrimination or was also a victim of the discrimination. Document your investigatory efforts and, if appropriate, take adverse employment action against the person who was the source of the discrimination. If your investigations uncover that no discrimination occurred, document those findings, as well.

In addition to an employee handbook, you should also intermittently hold informational seminars, particularly for managers and higher level employees, to educate them on the “dos” and “don’ts” of workplace conduct. Finally, and above all, demand zero tolerance for any form of discrimination in the workplace.



PATRICIA LEE
PARTNER

SBA Loans: Is the Process Worth It?

By Richard L. Doxey



The Small Business Administration (SBA) is a federal agency created by the Small Business Act, which was signed by President Eisenhower in 1953.¹ Since then, the SBA's programs have helped provide funding for many budding small businesses.

Rather than directly provide loans, the SBA sets strict guidelines for loans to small businesses, and guarantees lending institutions that such loans will be repaid.² Thus, when a business applies for an SBA loan, it is actually applying for a commercial loan through a lending institution in accordance with the SBA requirements.² These loans may cover a variety of businesses transactions, including

financing equipment and real estate. The SBA can also guarantee specialized loans, such as those for businesses involved in international trade, and loans for businesses affected by certain economic conditions.² The SBA loan programs vary and attempt to provide loans catering to small business needs.

As with all financing, it is important to assess your financial situation prior to applying for a loan. There is an extensive list of information that is required for an SBA loan application, which is presumably to ensure that the loan will be repaid.³ Common information required includes personal background, financial statements, business license information, income tax returns, resumes, financial projections, and a business overview and history.⁴ While the information required may appear to be burdensome compared to other commercial loan applications, the process requires applicants to consider factors in their business that they otherwise would not consider—particularly new business owners.

Once the application is complete, the lending institution will submit it to the SBA. Factors considered in approving the loan include: the purpose of the loan, how the money will be used, amount of money already invested in the business, working capital, collateral offered for the loan, and the probability of successful repayment.⁵ Central to the analysis is whether the

application and information accompanying the application clearly demonstrates that the debt payments will be paid and paid on time.⁶ Your application and accompanying information must prove to the lending institution and SBA that you are well acquainted with your industry and the market you are involved in, and explain to them how you will make money to repay the loan.

In addition to these somewhat ambiguous requirements, there are a number of more specific requirements your business must meet in order for the SBA to even look at the rest of your application. For example, "SBA-guaranteed loans may not be made to a small business if the borrower has access to other financing on reasonable terms."² There are also size requirements for your business, which vary by industry and are defined by the government.

Although applying for an SBA loan can be a long and difficult process (barely scratching the surface here), for businesses with few other sources of initial income, it can be a convenient way to get started. A small business often faces difficulties securing a loan from a large bank, and the SBA provides a way for these businesses to prove their credibility to large lending institutions. For individuals and businesses in the right circumstances, an SBA loan may be more than worth the effort.



RICHARD L. DOXEY
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[1] <http://www.sba.gov/about-sba-services/our-history> (Nov. 29, 2012)

[2] <http://www.sba.gov/content/what-sba-offers-help-small-businesses-grow> (Nov. 29, 2012)

[3] <http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/application-process> (Nov. 29, 2012)

[4] <http://www.sba.gov/content/sba-loan-application-checklist> (Nov. 29, 2012) For the full run-down of what is required for an SBA loan application, visit <http://www.sba.gov/content/how-apply>.

[5] <http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/application-process/credit-factors> (Nov. 29, 2012)

[6] <http://www.sba.gov/content/earnings-requirements> (Nov. 29, 2012)

AREAS OF PRACTICE

ADMINISTRATIVE LAW

The attorneys of Hutchison & Steffen are well-versed in environmental regulation and bring experience in addressing numerous environmental concerns. The Firm embraces federal, state, and local laws for clean air and water, hazardous and solid waste, radioactive mixed waste, radioactive waste disposal, endangered species, and the clean-up of hazardous waste sites. The Firm's attorneys have successfully solved complex environmental problems to include alleged violations of hazardous waste recycling and disposal standards, claimed infractions of the laws governing indirect discharges of water-borne pollutants and pre-treatment standards, and exoneration of clients from charges of improper storage of radioactive mixed wastes.

ALTERNATIVE DISPUTE RESOLUTION

The Firm offers a distinct alternative dispute resolution practice. The Firm provides advice and representation to clients who desire to resolve disputes in mediation, arbitration, or other alternative dispute resolution processes. The Firm's attorneys are seasoned practitioners before mediators and arbitrators.

APPELLATE LITIGATION

The Firm's attorneys bring to their clients an extensive history in the practice of appellate law. They have participated as counsel in cases before the United States Supreme Court, Federal Appellate Courts, and the Nevada Supreme Court. The Firm's experience in the Nevada Supreme Court is unparalleled in the state, and two of Hutchison & Steffen's attorneys offer combined experience of almost thirty years. One was with the Court for fifteen years, retiring as Chief Justice, and another was both a staff attorney and a long-time supervising staff attorney at the Court.

ASSET PROTECTION & BUSINESS PLANNING

Our attorneys understand the importance of protecting a client's assets against claims by potential creditors. The Firm's attorneys employ a variety of asset protection techniques to discourage or make impractical the seizure of assets or the collection of judgments. Hutchison & Steffen's asset protection strategies include the creation of Spendthrift Trusts, Offshore Asset Protection Trusts (OAPTs), Separate Property Trusts, retirement plans, family limited partnerships, and the gifting of property to descendants.

BANKING

With ever increasing regulatory controls, decreased liquidity, and stricter lending requirements, the attorneys at Hutchison & Steffen provide our banking and financial institutional clients with the experienced representation on state and federal matters to ensure compliance and operate effectively even in an uncertain economy. The Firm's practice also provides transactional risk management, loan restructuring, and litigation solutions for both the borrower and financial institution.

BANKRUPTCY & CREDITOR'S RIGHTS

The attorneys of Hutchison & Steffen regularly serve as counsel to creditors in proceedings filed under Chapters 7, 11, and 13 of the U.S. Bankruptcy Code. With an approach both aggressive and thorough, the Firm effectively guides troubled entities through the reorganization process and a return to profitability. Hutchison & Steffen routinely handles consumer and non-consumer bankruptcy filings and related bankruptcy litigation in the bankruptcy courts of Nevada, Utah, and Colorado.

BUSINESS LAW & COMMERCIAL LITIGATION

The attorneys of Hutchison & Steffen bring extensive experience to most major areas of commercial litigation. The Firm's practice handles matters of corporate, contract, intellectual property, environmental, employee relations, and product liability. Additionally, counsel is provided in preventative measures to avoid litigation. At Hutchison & Steffen, the interests of business clients are protected through such pretrial remedies as temporary restraining orders, preliminary injunctions, appointment of special masters, and receiverships. These remedies often require intense preparation so that the client's position is presented to the court in an accelerated trial format. The Firm successfully represents numerous clients each year in these types of proceedings. When cases proceed to trial, the Firm's in-depth pretrial preparation achieves effective results. Litigators at Hutchison & Steffen have experienced repeated success before juries and judges for large national companies, local companies, and individuals.

CONDEMNATION LAW

From pre-condemnation planning, government taking hearings and negotiation, to trial or appellate representation, the Law Firm of Hutchison & Steffen offers extensive experience in the complex environment of eminent domain. Our attorneys have substantial experience in representing property owners in proceedings when the government attempts to seize private property for public purposes. The Firm aggressively protects clients' legal rights through the condemnation process to ensure they secure just compensation.

CONSTITUTIONAL LAW

Hutchison & Steffen understands that Nevadans have a long tradition of fierce independence from government intrusion and overreaching. They expect government to respect and value their individual rights and liberties guaranteed in both the U.S. and Nevada Constitutions. The Firm has an active and high-profile practice in constitutional law. The Firm's attorneys have experience in property rights and Takings Clause matters, Commerce Clause litigation, and Equal Protection and Due Process Clause cases, including denial of equal protection of the law due to race, national origin, religion, and gender. The Firm represents individuals, corporations, states, and government officials in legal challenges to and defense of federal and state legislation and pursues legal claims involving governmental misconduct.

CONSTRUCTION LAW

Our construction-defect practice brings extensive experience and a solid reputation with the select group of mediators, special masters, expert witnesses, plaintiffs' attorneys, developers' attorneys, and subcontractors' attorneys who dominate Nevada's construction-defect legal practice. The attorneys of Hutchison & Steffen have litigated and tried many construction-defect cases and possess extensive educational and hands-on experience in the construction industry, providing a broad base for representing a variety of clients in construction-defect litigation.

CORPORATE & COMMERCIAL LAW

The Firm's attorneys provide clients with a broad range of legal services related to corporate transactions. These services include drafting documents for the formation and sale of business entities such as corporations, general partnerships, limited liability partnerships, and limited liability companies, as well as contracts and related documents covering many facets of business transactions. Additionally, legal services are provided to clients who wish to obtain protection of their intellectual property rights (e.g., trademarks and copyrights) under both state and federal laws.

ELECTION LAW & GOVERNMENT ETHICS

Hutchison & Steffen's Election Law and Government Ethics Practice counsels clients at all levels of state and local government concerning the complex and difficult election laws and regulations that apply to candidates for public office, public officials, and their campaigns. The Firm also guides public officials as they navigate Ethics in Government laws and directives. Our legal team consists of long-time Nevadans with deep community roots. The Firm brings considerable experience with state and local government, including the former Chief Justice of the Nevada Supreme Court and former and current members of local and state boards and commissions. The Firm's attorneys represent candidates, citizens, and political parties in election contests, open meeting laws, redistricting, and election law litigation.

EMPLOYMENT LAW

Hutchison & Steffen offers diverse experience in the complex environment of employment/labor law, with particular expertise in non-competition and confidentiality agreements. Offering knowledgeable advice with regard to various aspects of federal and state labor law and regulations, the Firm represents clients before administrative bodies on various employer/employee matters such as unemployment and workers' compensation claims.

FAMILY LAW

Hutchison & Steffen offers a complete range of legal services in the practice of family law. The Firm's attorneys are well-respected by family court judges, mediators, special masters, and practitioners for their experience, family-law knowledge, and

aggressive representation of clients. The Firm represents clients in all aspects of family and domestic law, including separation and divorce proceedings, community property division and settlement, adoptions, guardianships, child custody, visitation and support, child abuse, termination of parental rights, spousal support, and domestic violence (including protective orders).

HEALTHCARE PROFESSIONALS ADVOCACY

The Law Firm of Hutchison & Steffen represents healthcare professionals (including physicians, chiropractors, dentists, and nurses) and healthcare organizations in a variety of matters to include physician contracting, litigation, medical-malpractice defense, physician licensing, and credentialing. The Firm's practice includes the formation of, and counseling to, professional entities such as corporations and partnerships. With confident counsel by Hutchison & Steffen, healthcare professionals are represented before the Board of Medical Examiners, Chiropractic Physicians' Board, Board of Dental Examiners, and Office of Attorney General. Additionally, the Firm is active in mergers of medical practices, managed-care contracting, hospital contracts, and the purchase and sale of professional practices.

INSURANCE LITIGATION

The Law Firm of Hutchison & Steffen has an established relationship with many major insurance companies and understands how to effectively report and work with insurance representatives when their insureds are facing litigation. The Firm's attorneys have successfully represented the insureds of these companies in hundreds of challenging and varied cases. The scope of the Firm's representation includes general commercial liability, auto liability, premises liability, and professional malpractice defense. The Firm's attorneys also provide counsel to insurance companies in bad-faith litigation.

LANDLORD/TENANT

The Firm's attorneys litigate on behalf of owners/landlords in a comprehensive array of landlord/tenant issues. These matters include commercial and residential evictions related to nuisance, lease violations, abandonment, breach of contract, and non-payment of rent. The Firm has one of the largest and most active landlord/tenant practices in Nevada, and its attorneys are recognized as leaders in the field.

PERSONAL INJURY

The Firm offers a personal injury practice which carefully selects the representation of individuals who have suffered personal injuries or damages by motor vehicles, bad faith, wrongful death, and medical malpractice. The Firm has extensive experience in litigating major personal injury actions to successful conclusion.

PROFESSIONAL LIABILITY DEFENSE

Hutchison & Steffen has successfully defended numerous claims of malpractice filed against attorneys, doctors, dentists, and other professionals. Fellow professionals demand the highest degree of aggressive and competent representation, and the Firm has enjoyed tremendous success in the defense and prosecution of these cases.

REAL ESTATE LAW

The Firm provides a wide-range of legal assistance to clients for transactions related to the acquisition, development, and disposal of real property. The Firm also provides land-use planning, eminent domain, and zoning advice to clients. In its experienced representation of businesses and developers against defaulting lending institutions, the Firm has been highly successful.

TRUST & PROBATE LITIGATION

As part of the Firm's fiduciary litigation practice, Hutchison & Steffen represents trustees, banks, investment professionals, and private individuals who are involved in disputes concerning estates and trusts. When appropriate, the Firm works closely with other trust and estate professionals to maximize the client's opportunities for a successful resolution of these disputes.



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