

Galvanize Law

TRADECRAFT INDUSTRIES

LUNCH & LEARN SERIES

BY GALVANIZE LAW

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*Small Contractors Business Checklist: 10 Things
Your Business Needs to Know to Protect Itself*



Small Contractors Business Checklist

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Mr. Pasowicz's practice focuses on assisting construction clients in all facets of their business operations, as well as litigating on their behalf in both non-payment cases and construction defect cases. Mr. Pasowicz's construction industry experience includes owning a residential remodeling company based in Evergreen, Colorado for three years, and two years working in the construction industry as a residential laborer across various trades.

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SMALL CONTRACTORS BUSINESS CHECKLIST

- BUSINESS REGISTRATION AND ENTITY SELECTION
- BUSINESS LICENSES
- BUSINESS INSURANCE
- EMPLOYEES V. INDEPENDENT CONTRACTOR
- KEY CONTRACT PROVISIONS
- NEGOTIATION TACTICS
- MECHANICS' LIENS
- COLORADO TRUST FUND ACT
- DOCUMENT AND COMMUNICATION RETENTION
- WORK ON YOUR BUSINESS VS. WORKING IN YOUR BUSINESS



#1: Business Registration and Entity Selection



Types of Entities

- Sole Proprietor/General Partnership
- Limited Liability Company – LLC
- For Profit Corporation
- Limited Liability Partnerships – LLP
- Limited Partnerships - LP



#1: Business Registration and Entity Selection

Importance of selecting the correct entity

- Risks of liability
- Levels of taxation
- Complexity of requirements

How to register

- <https://www.coloradosos.gov/pubs/business/businessHome.html>
- Include the type of entity in the name



#1: Business Registration and Entity Selection

How to Form an LLC

- Operating Agreement
- Registered Agent
 - <https://www.coloradoregisteredagent.com/colorado-registered-agent-service/>
 - \$35.00 a year
 - Provides a private address for company and mailing address
 - Protects individual information



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#2: Business Licenses

General Contracting Licenses and Requirements are determined by the County/Local Government.

- If you chose to work in a new locality verify the requirements

Responsibility for pulling a permit

- “I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work shall be complied with whether specified herein or not.”

Most localities require licenses for the following individual trades:

- What trades require licenses:
 - Electrical
 - Plumber



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#3: Business Insurance



What is required

- Commercial General Liability
 - Counties and Local governments have different minimum requirements – verify before proceeding
- Limitations of a CGL policy
 - Does not cover replacement of your defective work
 - Does cover damages to property caused by your defective work
 - Will provide defense of construction defect claims



#3: Business Insurance

What is recommended

- No less than \$1,000,000 – more is better
- Typical cost of defense for construction defect through trial can cost in excess of 100k in attorneys' fees alone
- Damages can exceed the value of the Project, may include other parties' attorneys' fees, or additional categories of damages such as alternative housing, loss of use/enjoyment, loss profits, complete reconstruction of a damaged structure among others
- Total damages on a construction defect suit involving a \$500k home through trial can exceed \$1 million.

Other types of insurance to consider

- Employee Liability
- Cyber Liability



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#4: Employees v. Independent Contractor

Benefits

- ICs pay own taxes/benefits
- Carry own insurances
- Individually liable for their conduct

Risk of Misclassification

- Misclassification
 - When is an IC is really an employee
 - Behavioral – supervision, supplies, and control over means and method of work
 - Financial – How is the worker paid?
 - Hourly or by the job
 - Who provides tools
 - Are expenses reimbursed
 - Materials





#4: Employees v. Independent Contractor

Type of Relationship

- Is there a written contract or subcontractor agreement?
- Does the worker get benefits?
- Is the work an essential part of business
- Does the business control the means and method of work?
- Is the worker free from control?
- Can the worker work for other companies or complete independent projects?
- Materials

Penalties

- \$5,000 fine for first violation, \$25,000 for second
- Back owed benefits and taxes

Items to consider with Employee

- Workman's Comp
- Federal and State Paid Leave requirements
- Benefits for employees
- Employee handbook
 - Paid leave
 - Attendance policy
 - Ownership and Return of Company Property



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#5: Key Contract Provisions

Recommended Provisions

- Pay if paid v. Pay when paid v. Pay on completion
- Attorney's fees
- Material Price Increase

Provisions to Avoid

- Pay if paid
 - "Subcontractor agrees to accept the risk of non-payment if owner does not pay subcontractor's construction draws or final payment to contractor. Owner's payment to contractor of such funds shall be an express condition precedent to any obligation of contractor to pay such funds to Subcontractor."

Provisions to Avoid

- One sided Attorney's fees':
 - In the event Subcontractor defaults in the performance of any of the terms, covenants, agreements or conditions of this Subcontract, and Contractor seeks to enforce all or any part of this Subcontract, Subcontractor agrees to pay Contractor's reasonable attorney's fees, whether suit is actually filed or not.
- Defense and Indemnity
- Material Price Increase



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#6: Negotiation Tactics



- Is the job worth working?
 - Identify your cost to complete, know your profit margin, know your minimums
- Have your own contract with terms and conditions
- Alternative - have a one-page terms and conditions attached to your bid



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#7: Mechanics' Liens

Deadlines

- 120 days after last day of substantial work – To record lien
 - Recommended – 100 days
- 110 days after last day of substantial work – To give Notice
 - Recommended – 90 days

What is substantial work

- Work performed in order to complete the project
- Not punch list or cleanup items

Requirements

- Cannot overstate the amount owed
 - Cannot include attorneys' fees
 - Can face penalties





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#8: Colorado Trust Fund Act

- All funds disbursed by the owner to a contractor on a construction project are to be held in trust for the benefit of the subcontractors. A failure to hold in trust may result in claims including: Breach of Fiduciary duty; Breach of Trust; and Civil Theft;
 - If proven, the party can be subject to Treble Damages(3x)
- Your duties when using subcontractor or serving as a subcontractor
 - Project Accounting:
 - Must maintain records for every dollar that comes in from owner and goes out to subcontractors
 - Subcontractors have similar obligations
 - Failure to maintain the records can result in loss of defenses
- Benefits
 - The Trust Fund act, gives subcontractors or smaller companies the statutory right to demand the project accounting
 - Attorneys' fees and costs are included if Theft or Breach of Trust is proven



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#9: Document and Communication Retention

General Data retention policy of 8 years

- Specific project documents 3 years

Emails

- Store all emails between employees, subcontractors, and project owners

Phone records

- Texts
- Phone Calls

VOIPs or Other Cloud Services

- Internet based phone provider
- Allows for a company owned phone line to be installed on employee or subcontractor phones
- All information is stored securely and accessible from a computer
- If an employee leaves and takes their phone the phone line and all the information can be accessed by the company
- Information does not disappear if the phone is broken, lost, or stolen



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#10: Work on your business rather than in your business



- Do it early and often – prior preparation prevents ...
- Foundation
- Don't make assumptions
- Get everything in writing (text/email)



QUESTIONS?





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