

## HOW LIMITED IS MY PERSONAL LIABILITY FOR BUSINESS DEBTS AND LIABILITIES?

By Paul K. Silverberg, Esq., Silverberg & Associates, PA

As a business law attorney, when a person seeks advice about a new business or an on-going business, we initially discuss their current legal entity status. Whether they are a corporation (Inc.), a limited liability company (LLC) or other form (example, limited partnership, partnership, sole proprietor). As most people are aware, a business with a legal entity has distinct advantages over partnerships or a sole proprietor status. Most notably, Florida law generally protects the owners and officers from liability and company debts should the business be sued as it has a “corporate veil”. Contrary, in an unincorporated business (partnership or sole proprietor), the owners and officers are liable for any debts or lawsuits against their business or their partners as they do not have the protection under the “corporate veil”.

If a creditor of the business is unable (or believes it will be unable) to collect its claims against the business, it may attempt to pierce the corporate veil. The piercing the corporate veil will eliminate the liability protection given to the business owners and officers and expose them personally. The law generally states that the corporate veil will not be pierced absent a showing of improper conduct.

There are three (3) major factors that are relevant in most cases to “piercing the corporate veil” and must be proven by the creditor/plaintiff:

1. the business entity was an “alter ego” to the owners/officers as they controlled the entity to such an extent there was no independent existence from their personal assets/life;
2. the business entity was formed for fraudulently or for improper purpose; and
3. that fraudulent or improper use of corporate form caused injury to claimant.

Most people do not run into the “piercing the corporate veil” problem, but often with financial difficulties or “gray area” opportunities the business changes. However, more commonly, honest business owners abuse the independent existence of the business entity and create the “alter ego” status. This is most commonly abused by paying personal debts through the business. It starts as simple as paying the landscaper or utilities bills for the house from the business.

Others form their business entity after operating their business and when a situation arises that may result in a claim or lawsuit. The courts do not protect the corporate veil and limited liability when people form a business entity as fronts to protect personal assets.

To protect your personal assets from your business, you should only form a business entity to start or continue a true business entity, and second an owner/officer should never mix their personal assets and liabilities with the business unless they are following legal or tax advice or other legitimate basis under Florida law.

*Paul K. Silverberg is a shareholder at Silverberg & Associates, P.A. as the firm practices both Business Law (transactional) and Commercial Litigation, including the formation and representation of corporations and LLCs. To contact Mr. Silverberg, call (954) 384-0998, e-mail to [psilverberg@pkslegal.com](mailto:psilverberg@pkslegal.com) or visit the firm website at [www.pkslegal.com](http://www.pkslegal.com).*