



Devil in the Details; Licenses, Permits and Regulations

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Last month's chapter outlined one way to look at the order in which certain steps should be taken in setting up a new business. Every business is at least a little different than any other, even in the best franchises. One thing that commonly trips up start-up businesses is the morass of licenses, permits and regulations businesses must deal with at every stage of their life cycle. Especially daunting is the task of figuring this out if you have never owned or operated a business and you are starting one for the first time. You simply have no frame of reference to even understand that there might be regulations in some areas.

NOSEY NEIGHBORS

I've had an apparent example of that in my own neighborhood. A year or so ago, I came home from my downtown office and found a flyer in my mailbox. A neighbor a few blocks over in my subdivision had apparently run afoul of some local regulations. In this case the flyer indicated my neighbor had moved into the neighborhood a year or so ago, after first deciding this was a good neighborhood in which to live and work.

He indicated he was an engineer by trade. Apparently, he liked a house and considered making an offer. Before doing so, however, he had decided he would talk to some of his surrounding prospective new neighbors to see if they would object to him operating out of his soon to be new house. According to the flyer, he was told by those he asked that such an operation would not be a problem for them. He thereupon decided to buy the house.

After moving in, some other neighbors, apparently not initially consulted on the matter, noticed some increased traffic at the house. I'm not sure if this was from passenger vehicles, UPS or FedEx trucks, or pickup trucks. In any event, these other neighbors apparently decided to investigate matters and learned this gentleman was apparently doing more than simply living in his new house. He was operating a business there.

Many local governments have the power to enact zoning laws. Depending on where you live, this may be done at the city or county level. As most, but apparently not all people know, zoning laws are land use regulations. They are enacted as part of a plan to divide the geography of the jurisdiction into sectors where various uses of the land are either allowed or prohibited. Some areas, for instance, would be zoned for heavy industrial use, allowing no residential neighbors. Other areas of the community might be zoned for purely

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residential use, allowing only single family residences and prohibiting apartments and other denser living units. Other areas might allow some form of mixed use, including apartment complexes and light commercial use, such as grocery stores and pharmacies.

The local zoning regulations covering my neighborhood allow only single family houses. They prohibit any form of business use of the property. This is apparently something my newest neighbor either had not known when he moved in or he simply thought he could get away with if he got approval of his nearest neighbors. Regardless of how he got there, he was slapped with a cease and desist order. He first went through an administrative hearing, which is the reason he was soliciting neighborhood sympathy for his position, since this can have some merit in some zoning cases. Ultimately, he lost all the way through the administrative and judicial process, costing a relatively large amount of his time, hostility from at least some neighbors and, I'm sure, not an insignificant amount for legal fees.

All of this could have easily been avoided if he had done his homework before he placed a bid on the house. Any realtor can tell you the zoning for a property and how you can research the allowable uses of it before you commit to buy. It's obviously a little late after you sign the contract, unless there's an escape clause in it for zoning.

This little story is one of thousands every year in this community alone. Not all of them, Of course involve zoning. Another one I recall involved a frantic call I received from a new client. He had signed a long term lease on a space in a new strip mall. The location seemed pretty suitable for his business. He indicated he had done some demographics, mapped out traffic patterns and taken many other solid steps in opening his new retail operation.

He had even talked the landlord into giving him possession early, so he could build out the raw shell space to suit his needs. Having a little experience as a weekend home remodeled, he decided to save some money by doing a little of the build out himself. He and his sons spent a couple of weeks putting in much of the wooden framing for new interior walls of the space and were in the process of starting to drywall when they received their introduction to the local building code.

Like zoning laws, building codes are a set of laws or regulations legislated at the state or local level, and covering many types of construction issues. Some deal with residential housing and some deal with commercial space. In the case of my frantic new client, he was totally unaware of a local regulation which required that that this type of construction use metal studs in the walls rather than the wooden two-by-four construction he was familiar with for residential housing walls. He was simply out of luck.

This unfortunate client learned the building code the hard way. This was a disaster for him. He was over his budget when he started the project, so he decided to try to conserve his nest egg, by putting in some sweat equity up front. Rather than working on his marketing material or inventory, while he let a professional construction crew do the work, he and other family members spent long hours doing what someone else could have done better. Not only that, but he was "racing" the clock at the same time. His cash flow was so thin, that he had very carefully determined that he could only last a few weeks if he didn't

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open his doors quickly and start making sales.

His miscalculation, caused by lack of planning and ignorance of a basic and readily available regulation, caused a whiplash effect. He spent money he couldn't afford to lose on wooden studs for his new walls. He wasted his own time and energy, as well as that of family members who could also have put their time to better use, on the contraction which then had to be torn down and rebuilt. He then had to pay for a construction crew to come into do demolition and reconstruction, thereby costing him several times the money he would have spent if he had hired them in the first place. Worse yet, the delay caused by this cease and desist order, was enough to delay opening the store for several weeks beyond the target. Out of money and time, the cash poor client folded fairly quickly. The only remains of his effort was a long term lease he couldn't afford, since he had no cash flow, and this pushed him toward bankruptcy.

The Indiana State Information Center states, at its Business Owners Guide to State Government Web site (<http://www.state.in.us/sic/owners/iib.html>), "Indiana has over 400 different licenses, permits, certifications, and other permissions which could be required to engage in certain activities." Inquiries may be addressed by e-mail to the Indiana State Information Center: stinfo@sic.state.in.us.

Little things like failing to register to do business under an "assumed name" can trip you up if you don't know about the requirement. Many such forms are available online, such as in Kentucky (<http://www.sos.state.ky.us/sosdev/BUSSER/ssc226.pdf>) and Indiana (http://www.state.in.us/sic/owners/recorder_form.html)

There are over 1,800 business types and over 600 business licenses required from various agencies at the state level in Kentucky. Entrepreneurs can waste valuable time and resources determining which licenses are required for their particular type of business. The One-Stop Business Licensing Program was developed to cut through the 'red tape' by simplifying this process.

This program allows users to instantly receive a complete listing of all licenses that could be required at the state level. In addition to this streamlined process, users can obtain detailed information about the license or permit, such as the contact person in state government, the fees and requirements for the license, and hyperlinks to forms available on the Internet. <http://www.sos.state.ky.us/onestop.htm>

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This is the 11th installment in the Author's online book. Your comments and input would be appreciated in helping the Author make this an "organic book," which will continue to grow and adapt to change, just as any business itself must do. E-mail your comments and suggestions to the author at biz-law@juristechology.com.

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