

When Legal Issues Arise

By

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In my May 2010 article, I provided some basic common sense insight into the practice of law and when seeking legal advice seemed prudent. I suggested that such advice should be sought once we exceeded our “comfort zone” in dealing with the matters at hand. It seems simple enough in theory, but in practice it has not proven easily applied.

When legal issues arise, we often attempt to tackle the situation on our own. We charge into the murky waters without knowing what lies beneath and in many instances sink deeply into the quagmire. In time we may realize that we need help and only then do we make the call: “Can I make an appointment to see Mr. Miller?” By that time, the well-known expression that “he who represents himself has a fool for a client” may have proven its truth and what may have begun as a minor issue could have now grown into critical mass. Any seasoned attorney cannot begin to count how often they held back asking: “Why didn’t you come see me earlier?” Many issues could be handled and resolved in a prompt and cost efficient manner if they were presented at their onset rather than in the midst of their course. We heed the warnings of physicians to take preventative measures to ensure our health, but we seldom use that same wisdom in our legal dealings. We draft our own agreements; we interpret laws through the eyes of laymen; and we make decisions based on our concepts of morality and fairness.

If we are lucky, our efforts will pan out as we expect. If not, significant negative consequences can occur as is demonstrated by the following fact based situations:

- A former husband conveys real property to a former wife to hold in trust for their mutual benefit. Both parties still reside on the property. The former husband then continues to improve the property for several years. When later asked to reconvey the property back, the former wife refuses. The court rules in favor of the former wife, costing the former husband in excess of \$100,000 expended on property improvements. Now, the former wife owns it all.

- A landlord seeks to evict a tenant for failure to pay rent. In court, the tenant produces documentation to support the rent payments she claims to have made. The landlord, however, produces several inconsistent accountings. When a disputed issue arises regarding what payments were actually made, the court rules in favor of the tenant in part because of the landlord’s accounting issues despite the tenant having been charged with false reporting to law enforcement officers on at least two occasions.

- A corporate general contractor, who is no longer doing business, is sued for failure to pay a subcontractor three years earlier. When the subcontractor asks the general contractor to produce the company’s Articles of Incorporation, Minutes and other evidence of its corporate existence, the general contractor cannot do so because the records were boxed up and lost after the contractor ceased doing business. The court not only finds against the general

contractor, it allows the subcontractor to recover from the assets of the shareholder of the general contractor because of the lack of corporate documents.

These few examples are demonstrative of the thousands of situations in which the losing party may have prevailed had they sought legal counsel prior to entering into the transaction giving rise to the dispute. Preventative maintenance is equally as important in legal affairs as it is in health issues. So the next time you are considering a business, real estate or possibly an estate planning matter, protect yourself and err on the side of caution. Run the issue by your attorney. The hundred or so you spend today may save you hundreds of thousands tomorrow. Isn't that worth the investment?