Most Common Errors in "Self-Incorporating" and Non-Attorney Incorporations

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The laws in many states define "incorporation" as a part of what constitutes the "practice of law" and declare it unlawful for anyone to practice law, including incorporating another, unless he or she is a graduate of an accredited law school and duly licensed to practice law in that state. Among the most common errors and omissions in "self-incorporating" and not using an attorney experienced in corporate matters are the following:

Charter Only/ "Skeleton" Corporations – Misleading ads, some accountants, and others—including, unfortunately, the Secretaries of State of a number of states—lead persons to believe you need only fill out a Charter, send in $125 or so, and "you are incorporated." As explained below, this is simply not correct.

Incomplete Incorporation – It is critical to go beyond a simple "charter" or "skeleton corporation" and hold the "Organizational Meeting of the Board of Directors." Often this is not done at all by laypersons, and as a result the corporation is incomplete and years later a creditor can "pierce the corporate veil" and deny limited liability to the owners. Furthermore, the tax consequences can be disastrous. "Incomplete incorporation" includes, but is not limited to:

1. **No Organizational Meeting the Board of Directors;**

2. **No Bylaws** adopted defining the roles of officers, directors and much more;

3. **No Directors** ever elected and **no Officers** ever elected, and those who act for the corporation in fact have no authority to act on behalf of the corporation;

4. **No shares of stock** ever issued, and therefore there are no shareholders;

5. **No stock ledger** ever purchased or completed showing the ownership of the corporation

6. **No "S corporation" filing** was done with the Internal Revenue Service—which must be done within 75 days of issuing stock. As a consequence, the corporation is a "C" corporation subject to federal and state income taxes and double taxation for failure to file a simple, one-page "S corporation election."

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7. **No bank account** ever authorized by the corporation;

8. **No monies ever paid in** as capital stock, critical to the right to "limited liability;"

9. **No minutes** ever prepared reflecting the organizational meeting of the Board of Directors or other corporate activity.

10. **No assets are actually transferred** to the corporation; **no Bill of Sale** ever prepared containing a list of assets and transferring assets from the unincorporated business over to the incorporated business;

11. **No corporate kit** ordered containing stock certificates, corporate seal, stock ledger, and more;

12. **Violate S Corporation Restrictions** – The Corporation or a shareholder violates one or more of the S. Corporation requirements, resulting in unplanned "double taxation," both federal and state.

One or more of the foregoing items can result in denial of corporate status for tax reasons or for purposes of limited liability in the event of a lawsuit or counterclaim. The consequences can be disastrous when claims are presented by creditors, worker's compensation claimants, customers, employees, landlords, utility companies, advertisers, federal and state taxing authorities, and others.

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