

Raker

Appliance Repair Professionals, Inc.

Legal Issues & Paperwork

Manual 10

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Legal Issues & Paperwork

Countless books have been written about business and start-up considerations. It is overwhelming. Worse than that, there is

SALES TAXES
STATE TAXES
LOCAL TAXES
PERSONAL PROPERTY TAXES
PARTNERSHIPS
CORPORATIONS
SOLE PROPRIETOR
RECORD KEEPING

Many of the laws on the books were originally intended to protect the public. Unfortunately, we all know that, things don't often work out quite the way that they were intended.

In this lesson, *Uncle Harry* is going to show you how to thread your way through this maze of regulation. You will learn how to easily and legally operate your new business.

The various levels of government affect a small business in many ways, but they all amount to the same thing. Every form filed and license held requires time away from production. Every tax paid takes money out of production.

a lot of conflicting advice on how to structure and setup any business. Compliance with laws and restrictions are totally bewildering.

For starters consider:

TRUCK INSURANCE
LIABILITY INSURANCE
HIRING EMPLOYEES
PAYROLL TAXES
LICENSING
ZONING
BANKING
THE IRS

No government employee has ever had to worry about time management or profitability. Such "minor issues" are left up to good citizens like us. We must find time to comply with the endless regulations and somehow still make a living.

Did you ever wonder why the **entire accounting industry** has mushroomed in the last 50 years. It is for one reason, and one reason only. The reason is compliance with the Internal Revenue Service Laws! The IRS laws are so complicated, that the IRS **itself** can't properly interpret them!

The IRS is just one of many agencies with which we must deal.

*Uncle Harry's
Story Time*

Having run so many businesses, I have a great deal of experience dealing with tax, licensing and inspection issues. For instance, the entire asbestos removal industry was created as a result of compliance with a new OSHA law. Within a few years, inspections cost far more than the removal process itself.

On one job, we performed asbestos removal in a closet of a government building in Washington, DC. During the removal process, the air must be sampled and tested to insure purity. Of course, this prospects the employees that are working in the building, and the asbestos workers.

The air sampling devices used were about the size of a lunch box. Each air sample device is to be carefully set up on a special stand away from any interference. We were required to sample the air in order to correctly pick respirators for our men.

By contract, we also had to pay an independent testing company to test and check all of our results. The government had its own set of inspectors who ran tests to insure that our testing was accurate. The employees union didn't trust our tests or those of the government inspectors. They hired their own inspector to run his own set of tests.

By the time all of the test devices were in the closet, we didn't have enough space to do the work. We were constantly tripping over air sampling machines! This is an excellent example of a good law gone bad.

Such stories are endless and only serve to identify a major issue that must be recognized and dealt with. Death, taxes and compliance with laws are here to stay.

However, the appliance business is blessed. Compared to other businesses, it involves a minimum of regulation and inspection.

With the help of *Uncle Harry*, some forethought, and advance planning, the time spent and the cost of complying with the required regulations can be kept at an affordable minimum.

As you go through this lesson, there is one important thing you should not forget. You are in the appliance business to make money. Compliance with government regulations and all the various laws, no matter how necessary, hurt in two ways.

1. They cost you money

2. They take time away from making service calls.

Laws and regulations combine to increase your overhead and make life more complicated.

Uncle Harry's
Trick of the Trade # 152

Without breaking any laws, it is essential to keep the interference of the government and other agencies at an absolute minimum. They only decrease your profitability. ***Uncle Harry is going to teach you how to comply and still keep your profitability and your efficiency at an absolute maximum.***

The philosophy that we follow on this subject is very similar to that which we use in dealing with appliances. It is important to keep everything as simple and as easy as possible. Following that logic, you need to establish your business so that is safe, legal and highly profitable for you.

In this lesson, we will the following topics:

1. Your Legal Structure.
2. Licensing.
3. Accounting.
4. Company Records
5. Tax compliance.
6. Insurance coverage.
7. Employees.

Before we dig in you need to meet two important people and renew your acquaintance with our old friend *Eddie Simon*.

Uncle Harry's
Story Time

One of my favorite long-term friends has operated a moonlight appliance repair business, out of his house, for over 50 years. His wife is usually home and takes any service calls on the home phone. He runs his service calls in the evening or on Saturday. He has always worked a normal daytime job.

Never once has he ever given any consideration to any legal issues. To the best of my knowledge, he has never written up an invoice, other than on a scrap of paper, never had any insurance, and never held any license or filed a tax return pertaining to his business. He has never spent a dime on advertising or accounting in his life. He just quietly does his thing, and collects his money.

As a result of his many years of moonlight activities, he is financially very comfortable.

Accountants, lawyers, taxmen, and insurance companies hate people like my friend. They can't make any money off of him. They all would love to get their hands into his pockets, but they can't. They can't find him. He is truly invisible. He doesn't appear on any records anywhere.

For reference and simplification, let us give my good friend the fictitious name “Scofflaw”. We will frequently refer to “*Scofflaw*” and explain how he reacts to the various laws and legal issues that

will be confronting you. *Scofflaw* doesn’t understand most of the regulation and dislikes the ones that he does. But somehow, he manages to get by.

“SCOFFLAW” CUTTING THROUGH A WORLD FULL OF RED TAPE



In contrast, I have a second friend that thrives on regulation and compliance. He carefully complies with every license, code and laws that he feels is necessary to carry on his business.

He is incorporated and has selected a very burdensome straight and narrow route for his business. We will name him "*Straight Arrow*". He is the opposite extreme of *Scofflaw*.

"STRAIGHT ARROW" ON A GOOD DAY
(Notice the conspicuous lack of tools)



Our old friend *Eddie* follows most of the regulations. He represents the path that most of us follow.

He is a middle-of-the-road kind of a guy.

"EDDIE" AT WORK



In this lesson we will use these three characters to set the stage for the extremes and the middle ground of the issues that we wish to cover. By using *Scofflaw*, *Straight Arrow*, and *Eddie* as examples, you can decide how you are going to react in the increasingly complex world of regulation.

1. Legal Structures

Starting a new business can be equated to creating a new person. It is almost like having a new child in the family. It can be a totally absorbing experience.

A new business has a new name, a new federal tax identification number (like a social security number.) It also requires heat, space, and costs money. It needs to be cared for, insured, and taxes filed. You may need to call on experts like accounts and lawyers (instead of pediatricians.) In short, you have a lot of responsibilities, but no stinky diapers.

When opening a new business there are many legal structures from which to choose. Each has its advantages and disadvantages. You can choose between:

- 1) A Sole Proprietorship.
- 2) A Partnership.
- 3) A Regular Corporation (type C).
- 4) A Sub-Chapter S Corporation.

1) A Sole Proprietorship

Suppose you simply begin running service calls and making money. In doing so, you have simply ignored the “legal structure issue” completely.

There is absolutely nothing wrong with this approach. By default, you have set up a proprietorship. *Scofflaw*, even though he doesn’t know it, is operating a proprietorship.

A proprietorship is simply an individual doing business under their own name. Hundreds of thousands of individuals across the country do business this way. It is also perfectly legal to operate under a trading name.

For instance, our old friend Eddie Simon, might trade as Simon’s Appliance Co. His account at the local bank would read:

*Edward Simon
T/A Simon’s Appliance
Company*

The T/A stands for “trading as”. His checks would simply show:

*Simon’s Appliance Company
1234 Walnut St.
Timonium, MD 21093*

For only the effort of opening a checking account and the cost of printing checks Eddie is in business!

By comparison:

Scofflaw doesn't have a checking account, he operates on cash only. Any checks are quickly turned into cash.

Straight Arrow has a corporate checking account. Opening a corporate account requires that a "corporate resolution" be filed, signed by the president of the corporation, signatures of any signing officers, and stamped with the corporate seal. This resolution must be filed in the corporate records and should be stated in the minutes of a board meeting.

The simplest legal structure is no legal structure at all.

For centuries people have operated like *Eddie* and *Scofflaw*. Mom and Pop start selling eggs out the back door one day and suddenly, before they know it, they are operating a chain of grocery stores. Eventually, the lawyers and accounts come in and take over the operation. Mom and Pop, if they are still alive, will never understand why the shoebox next to the cash register is no longer good enough. It certainly worked for them. They were able to put three kids through college.

There is really no limit to the size and capabilities of a simple proprietorship. Some huge operations are still legal proprietorships. However, a proprietorship, for various reasons that will gradually become clear, becomes cumbersome as a business grows.

In general, proprietorships, are usually smaller businesses. Most often they are operated by individuals with only a few employees. It is a simple and logical option for a business start-up. It offers a minimum of regulation.

2) Partnerships

It is often tempting to form a partnership with a close buddy. Opening a new business creates anxiety and having a friend involved seems to make the process and risk more manageable. It provides someone to confide in and talk to, as the daily problems confront you.

Most partnerships fall apart fairly quickly. One partner is always more motivated than the other.

It is almost inevitable that the stronger partner will soon feel that he is doing all the work. He will feel that the second is not carrying his weight. Arguments quickly ensue and down the tube it goes.

Uncle Harry's
Trick of the Trade # 153

If you don't **totally** and **completely** trust your potential partner, forget the whole idea.

Partnerships work well in certain circumstances.

Uncle Harry's

Trick of the Trade # 154

A carefully set of rules must be carefully defined. Each partner must know exactly what their responsibilities are.

For instance, two men may open a partnership and advertise together. They use one company name and both operate out of the same office. They share parts inventory, a secretary and other expenses. When calls come in, one partner runs the east side of town, and the other the west. Each draws a paycheck according to the amount of profit produced.

Such a partnership has potential because the sharing of overhead saves both money, and the division of pay is based on effort. The partnership creates a savings and an advantage for both parties.

Basically, a partnership only works if both partners need and complement one another.

Uncle Harry's

Story Time

My uncle and I had a very successful partnership in the asbestos business for six years. It worked because we needed each other. Originally, he needed me to finance and set up the company. I needed his technical expertise in asbestos removal.

As time passed and the company grew, our roles changed. However a mutual need and a give and take still existed. He still needed me to organize and run the major projects scattered across three states. I still needed him to smooze the customers and continue bringing in big contracts.

The partnership continued profitably, without argument, right until we sold the business and he retired.

Good partnerships seem to work better when the partners bring together completely different skills. A successful business needs expertise in many different areas. An individual mechanically skilled is seldom good at advertising and accounting. Most mechanics hate paperwork of any kind. It often makes sense to combine a person with mechanical skills with those of a strong sales and business minded person.

*Uncle Harry's
Story Time*

In the appliance business, it is often necessary to refer calls to a plumber. After some searching, I have found a plumber that satisfies my customers. He provides excellent, timely service, at fair prices.

The plumbing company, Walter Brewer Plumbing and Heating, has been around for a long time. Years ago, I knew the founding father. Three surviving sons now run the company. One son stays inside and runs the office. He handles the telephone and all the paperwork. A second son handles air-conditioning and heating systems. A third son handles all the plumbing problems. This interesting arrangement has been successful for many years.

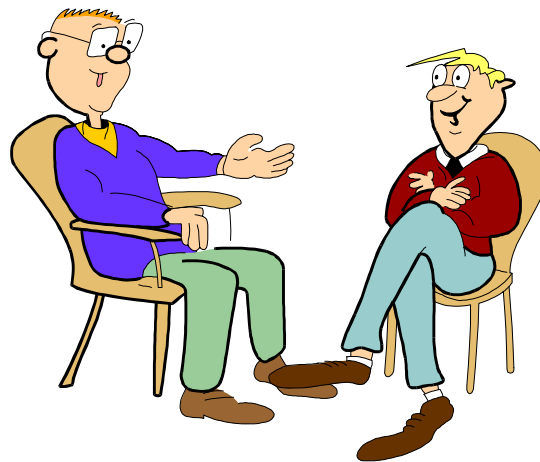
It works because each son brings a unique skill into the partnership.

For many small businesses, partnerships are really two proprietors working together. They will informally combine resources and divvy up the receipts in a mutually agreed fashion. They are not a partnership in the legal sense. To set up a legal partnership a lawyer to draw up a complex document. A “partnership agreement” will cost at least several hundred dollars.

The lawyer will encourage the partners to each carefully define their individual roles in the partnership. He will ask many questions that the partners have never even considered.

Lawyers always play a game of “what if.” They know that, if things go poorly, one partner will blame the other for all the problems. If they go well, greed often enters the picture. Lawyers, frequently dealing with the down side of life, realize that problems will come up. Problems that neither partner predicted.

A good lawyer plays an advisory role much like that of a marriage counselor. A partnership is very similar to a marriage.



A partnership has the advantage of combining the assets of the various partners. It has the downside of obligating the remaining partners to actions done by any other.

Without proper planning and protection, one partner can quickly wipe out the assets of all. The assets can disappear if an angry partner simply cleans out the checkbook.



A more likely scenario occurs if an accident occurs and a liability problem results.

Limited Partnerships

A “limited partnership” is a complex legal agreement designed to accomplish two things:

1. It provides the tax advantages of the partnership structure. Those advantages involve accounting cost and taxation.

They need to be explained by a good lawyer or tax accountant.

2. It limits the exposure or liability of any one partner.

Limited partnerships are often used in real estate ownership. They are seldom used in the service industry. The concept is mentioned only to acquaint you with the general concept.

