

## Avoiding Personal Liability For Corporate Debt\$



**PRESENTED BY:**  
Jack L. Haan

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Shaheen, Novoselsky, Staat,  
Filipowski & Eccleston, P.C.  
Chicago, IL

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### ABOUT YOUR SPEAKER AND HOST

#### Jack L. Haan

- SNSFE partner & head of the commercial litigation group
- Practice concentrated in commercial litigation and appeals, including construction disputes, breach of contract, fraud, breach of fiduciary duty, injunctive relief, collections, securities & fiduciary litigation
- Named to the Illinois *Leading Lawyer* list for Commercial Litigation

#### SNSFE

- Established in 1960
- Full service business law firm
- Representing closely-held businesses, entrepreneurs and individuals
- From start-up to succession planning
- "A-V" Peer-Review Rated by Martindale-Hubbell

\* Martindale-Hubbell is the facilitator of a peer-review process that rates lawyers. An "A-V" rating is the highest rating for "Legal Ability" and "General Ethical Standards."

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A corporation is a legal entity that exists separately and distinctly from its shareholders, officers, and directors, who generally are not liable for the corporation's debts.

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A primary purpose of doing business as a corporation is to insulate stockholders from unlimited liability for corporate activity.

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### Corporate Formalities to Follow

1. Prepare bylaws for corporate governance

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1. Prepare bylaws for corporate governance
2. Issue stock / prepare certificate

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### Corporate Formalities to Follow

1. Prepare bylaws for corporate governance
2. Issue stock / prepare certificate
3. Set up business accounts separate from personal accounts

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### Corporate Formalities to Follow

1. Prepare bylaws for corporate governance
2. Issue stock / prepare certificate
3. Set up business accounts separate from personal accounts
4. File the annual report
  - Have report sent to your attorney as registered agent
  - One less detail for you

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### Corporate Formalities to Follow

1. Prepare bylaws for corporate governance
2. Issue stock / prepare certificate
3. Set up business accounts separate from personal accounts
4. File the annual report
5. Prepare corporate minutes
  - Major corporate transactions
  - Loans, acquisitions
  - Removal of officers, key employees

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### Corporate Formalities to Follow

1. Prepare bylaws for corporate governance
2. Issue stock / prepare certificate
3. Set up business accounts separate from personal accounts
4. File the annual report
5. Prepare corporate minutes
6. Adequate capitalization

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### Corporate Formalities to Follow

1. Prepare bylaws for corporate governance
2. Issue stock / prepare certificate
3. Set up business accounts separate from personal accounts
4. File the annual report
5. Prepare corporate minutes
6. Adequate capitalization
7. Get sufficient insurance!

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**Failure to follow these formalities may lead to personal liability.**

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### **"Alter Ego" Theory**

A Court may disregard a corporate entity and pierce the veil of limited liability where the corporation is merely the 'alter ego' or business conduit of another person or entity.

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### **"Alter Ego" Theory**

Factors the courts look at:

- A strong unity of interest between individual owner & business

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### **"Alter Ego" Theory**

Factors the courts look at:

- A strong unity of interest between individual owner & business
- Adhering to separate existence between the two would promote injustice or fraud

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## **"Alter Ego" Theory**

Factors the courts look at:

- A strong unity of interest between individual owner & business
- Adhering to separate existence between the two would promote injustice or fraud
- Court may 'pierce the corporate veil' of protection

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**As a litigator, I want your corporate records.**

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## **EXAMPLES**

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**EXAMPLES**

- Public records
  - Corporation in good standing?
  - Dissolved?

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**EXAMPLES**

- Public records
  - Corporation in good standing?
  - Dissolved?
- Corporate record book
  - Stock records?
  - Stock issued?
  - Minutes?

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**EXAMPLES**

- Public records
  - Corporation in good standing?
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- Corporate record book
  - Stock records?
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- Bank statements, records of deposits & expense payments

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## EXAMPLES

- Public records
  - Corporation in good standing?
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- Corporate record book
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- Bank statements, records of deposits & expense payments
- "Follow the money trail" - subpoenas to banks

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## EXAMPLES

- Public records
  - Corporation in good standing?
  - Dissolved?
- Corporate record book
  - Stock records?
  - Stock issued?
  - Minutes?
- Bank statements, records of deposits & expense payments
- "Follow the money trail" - subpoenas to banks
- Insurance? Amount?

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## Fontana v. TLD Builders, Inc., 362 Ill.App.3d 491 (2<sup>nd</sup> Dist. 2005)

The Court pierced the corporate veil and held President of the company personally liable.

- **Construction company failed to keep and maintain corporate records.**
  - There were no records of the amounts borrowed by company to purchase properties and build homes, did not keep written contracts, change orders, or written work schedules for projects, and kept no financial records for any payments that company made except for draw schedules.
- **Construction company did not follow corporate formalities.**
  - No corporate resolutions authorizing notes to be paid to president and shareholder to satisfy the loans they purportedly made to the corporation
- **Construction company's funds and assets were commingled.**
  - One shareholder testified that company had no employees, never paid a salary or a dividend, and that she had no idea how funds were deposited into her and president's personal checking account.

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## SUMMARY

Complete the corporate formalities:

- Bylaws
- Stock/certificate
- Separate business accounts
- Annual report
- Corporate minutes
- Capitalization
- Insurance

Hire counsel to rectify any errors in the setup of your corporation and any shortcomings in record-keeping.

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## Questions?

For more information on the commercial litigation group and its services, or if you have a question about this presentation, please contact Jack Haan at:

**JHaan@snsfe-law.com**

312.621.4400

To review this presentation or any of our other recorded events, go to:

<http://www.snsfe-law.com/lawyer-attorney-1096383.html>

*Thank you!*

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