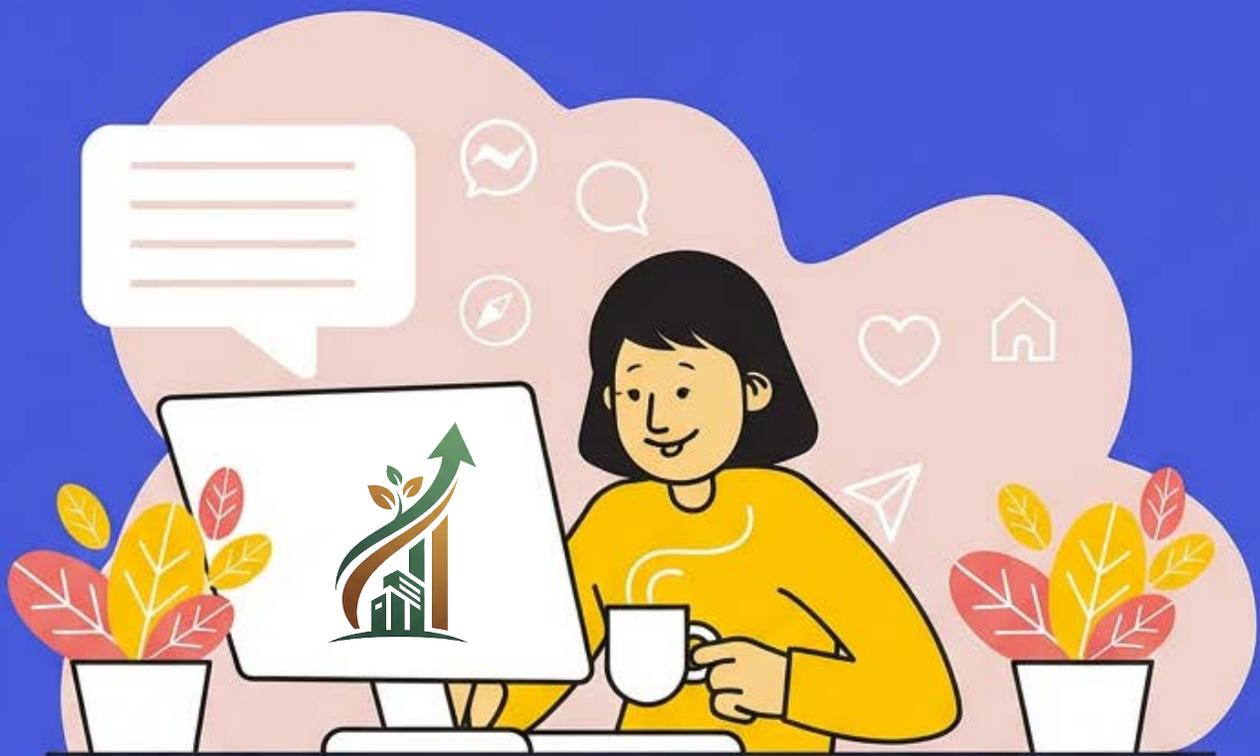


THE STRONG
PROTECTED
BUSINESS
CHECKLIST





The Strong Protected Business Checklist

At Affluenity, we believe our primary job as attorneys is to help our clients identify and resolve their vulnerabilities so they can capitalize on their opportunities. Our first Core Value is to Believe and Protect our Clients' Dreams. This checklist was designed to help us do just that.

We drew on our experience to identify the issues our clients bring us to resolve. We then reverse-engineered what steps businesses can take to prevent or prepare to deal with these vulnerabilities.

Then we divided them into the following categories:

- Ownership
- Business Associates
- Employees
- Independent Contractors
- Customers
- Vendors
- Financial and Revenue
- Property
- Insurance
- Digital and Web

We grouped the vulnerabilities under these categories in a checklist to help businesses identify and prevent problems that will hold them back and/or cost them dearly to resolve.

We recognize that building a company takes devoted effort and not every protection can be put in place right at the start. Some protections are fundamental/foundational that every company should have in place from its inception. Other vulnerabilities become more pressing at different stages of a company's growth. Using the noted essay, "Evolve Yourself to Scale Your Business," we outlined four stages of a company's growth. These stages are based on a business's revenue and number of employees, and we use them to provide recommendations for when a business should be sure to get the protection established. The chart uses spotlight colors to indicate when it becomes critical to deal with the given issue.

G	Green means we recommend this issue be resolved at this stage
Y	Yellow means you should consider this issue. If critical to your unique business, get it done now.
R	Red means, for most businesses, you can put this on hold at this level of your business's growth.

All the issues that apply to your business warrant consideration and ultimately attention, but some are more critical when your business is small. By the time you have 30 or more employees you should have considered and resolved all the applicable issues that apply to your business.

The "Reasoning and Commentary" column is there to provide insight as to "why" the issues were included, though this is by no means exhaustive.

Strong Protected Business Issues	Foundations	Fortify	Defend	Dominate	Reasoning and Commentary
	0-6 Employees and/or \$0 up to \$1m Revenue	7-15 Employees and/or \$1m to \$2.5m Revenue	16-30 Employees and/or \$2.5m to \$5m Revenue	30+ Employees and/or >\$5m Revenue	

This checklist is not intended to be legal advice and in fact, many of these issues are not *per se* legal issues, but rather best practices that if not addressed can fester into legal, financial or other problems.

Ownership Issues					
Do you have limited liability established through a corporation or LLC?	G	G	G	G	Having limited liability is how business owners protect their personal assets and separate their business interests.
Do you have bylaws, if your business is a corporation, or an operating agreement if it is an LLC?	G	G	G	G	Many business owners omit putting these in place. When that happens, state law becomes the default, and this is frequently not optimal for management of the company.
Do you have a succession plan for your business if you become disabled or die, including having life and disability insurance in place for your family and for your business?	R	Y	G	G	Business owners typically rely on their companies to provide for their families. They should be ready if something happens to them, which is very possible.
Do you have an exit strategy to sell or hand off your business?	R	Y	G	G	This applies more to established businesses. The owner should run the business in such a way that it is a sellable asset. This means things like building systems so it can operate independently and keeping legitimate books.
Do you have your estate plan in place?	Y	G	G	G	All business owners should have an estate plan even if it's just a simple will or the state law becomes the default, which is nearly always a disaster for the business.
Do you have at least one person in your company willing to stand up to you and tell you if you are making a stupid decision?	R	Y	G	G	Business owners need someone to tell them when they are making bad decisions. This goes back to "Two heads are better than one." A company full of "Yes Men" is a disaster waiting to happen.
Are you committed to constant improvement of your skill sets to improve your business?	G	G	G	G	One truism in growing a business is "New Level, New Devil." It is critical that business owners are attuned to this and ready to accept the inevitable challenges. If not, they should not be running a growing business.

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Do you have regular meetings of your core team where work assignments are clearly documented, and completion dates set?	Y	G	G	G	Business owners must learn to run a team and delegate to them. This requires regular meetings to keep everyone beating on the same pulse. Also, delegation is not abdication; it requires accountability, preferably in documented "Who, What and When" commitments.
Do you have copies of your corporate records saved digitally and backed up off site?	G	G	G	G	This is a simple task, but it is often disregarded. Without these there is no record of ownership or corporate action.
Do you check your business's registration with its state of organization or incorporation annually, and if you do business in other states, have you registered your business in those states?	Y	G	G	G	Businesses operating in more than one state need to be registered with the Secretary of State. If the business is not registered, it could face regulatory or tax consequences or the legal inability to defend claims.
Does your company stay focused on its core line of work and not take on work that is outside this scope?	R	Y	G	G	Businesses that take on projects in which they have not developed core competencies are susceptible to making mistakes that, at best, erase their profit margins on the work and, at worst, get them in a lawsuit.
Do you do a quarterly assessment of the vulnerabilities of your business and have a proactive plan to deal with them?	G	G	G	G	Our recommendation and firm practice is to run the Business Immune System Report quarterly to stay attuned to your threats. This is part and parcel of "Deal with your vulnerabilities or they will deal with you." If you do, you can capitalize on your opportunities.
Does your business have operations procedures written out so it can run without you there?	R	Y	G	G	Written systems are foundational to a business that can "run itself." They are also critical to salability. As a business scales, this becomes even more critical because the business owner cannot micromanage and keep the company afloat.

Business Associate Issues

If there are owners of your business, other than you and your spouse, do you have a method to value and split up the business built into your bylaws or operating agreement?	G	G	G	G	Business Divorces happen frequently and without a clear "escape hatch" the courts are the recourse to resolve disputes. This is a very expensive process that is immensely disruptive at best and is often fatal to the company.
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If there are owners of your business other than you and your spouse, do your bylaws or operating agreement have a method to deal with the death, disability, or dishonest conduct of a business associate?	G	G	G	G	This is closely related to the issue above with the difference that the one above is solely about valuation. This is designed to keep from having to accept a former business associates heirs or family as your business partners. Another aspect here is the ability to eject a business associate for cause, which is a real concern.
Do you have non-compete, non-solicitation, and non-disclosure agreements with business associates that leave the business?	Y	Y	G	G	Business owners should have these in place to prevent an exiting or ejected business associate from stealing the company's business.

Employee Issues

Do you have written job descriptions or role clarities?	R	Y	G	G	These documents are critical to successful team work even if the company is still operating "all hands-on deck." As the company grows the roles will clarify and having them written out will expedite that. Written documents like this are also a foundation for dealing with coaching, disciplinary and separation issues.
Does your company do reference checks on all potential employees?	R	Y	G	G	The adage, "The leopard does not change its spots" is in play here. Unlike mutual funds, with employees past performance is indicative of future performance. Reference checks are critical.
Does your company do criminal background checks on all potential employees?	R	Y	G	G	This a deeper dive into past performance in life. There are legal issues in taking this step, but it is not expensive and can turn up disqualifying past behaviors including dishonest and substance abuse issues.
Do you have a written hiring procedure with clear guidelines for what questions you cannot legally ask potential employees?	R	Y	G	G	Employment discrimination suits are a dime a dozen. Every city is full of second-string street lawyers that know they can shakedown businesses with the most incidental mistakes and it often comes down to your word against their client. These suits almost always settle for a few thousand dollars, but they are easily avoidable.

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Do you use personality tests such as DISC or the Enneagram in your hiring process?	R	Y	G	G	Employee turnover is hugely expensive, and these tests can turn up bad fits. A business's sophistication with how to use them typically grows over time. A great foundational one is Cultural Index.
Do you confirm a person's citizenship prior to employment and retain a copy of the I-9 form?	G	G	G	G	This is the law and it just takes a form. If this box is not checked the penalties can be very expensive.
Do you have written employee contract with all your employees that has an arbitration clause for any disputes and that limits your liability?	R	Y	G	G	Part of this is to clarify the key performance indicators. Other issues include, pay, bonuses, reasons for termination and often arbitration provisions. This is a "good fences make good neighbors" practice.
Does your employee contract have non-disparagement, non-solicitation, non-competition, and non-disclosure clauses?	R	Y	G	G	These documents can prevent a dishonest or disgruntled employee from stealing all your trade secrets, customers, and other assets that you worked so hard to build.
Have you identified and written your company's core values and are you prepared to fire any employee who regularly deviates from your company's core values?	R	Y	G	G	The culture of an organization is critical to its health, that is the job satisfaction of the team, which translates to how they treat customers. A great resource for this is the book, "The Core Values Equation." Written core values also protect a business from employment claims.
Do you have clear key performance indicators (KPIs) for all your employees?	R	Y	G	G	Job descriptions and a contract are part of this, but there is more to it. As a growing business faces new challenges the team needs accountability for meeting them. Keeping quarterly updated KPIs builds this in and indicates who needs to leave the team, while also providing a benchmark that protects from claims.
Do you regularly assess if your current team can take your business to your envisioned next level?	G	G	G	G	Your job as CEO is to protect the dream of building a self-sustaining, life-changing business. Frequently people who pushed that dream along through one level become impediments to getting through the next. Not accepting and acting on this can lead to a host of issues from cultural to performance.

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Do you have a written employee handbook with sexual harassment, drug, alcohol, vacation and sick leave policies clearly set out?	R	Y	G	G	An employee handbook not only provides clarity for your team, it also protects the company against claims to include discrimination, wage, and harassment.
Do you have an employee discipline and separation/termination procedures?	R	Y	G	G	Not all of this should be part of your handbook, though some of it will be in there. A business should have an established process for dealing with problem employees to make sure you do not make unforced errors that cost your company dearly.
Do you have regular employee reviews?	R	Y	G	G	Quarterly check-ins with each employee will identify and avert a host of employee issues.
Do your compensation and benefits comply with discrimination laws, workers' compensation, Family Medical Leave Act, minimum wage, Employee Retirement Income Security Act (ERISA) and Consolidated Omnibus Budget Reconciliation Act (COBRA) requirements?	R	Y	G	G	The list of labor laws on the federal, state and sometimes local level looks like alphabet soup but can feel like a minefield if you "step" in the wrong place. Ensuring compliance with these laws is critical to protecting your business.
Are your salaried workers all categorized and paid appropriately under the Department of Labor regulations?	G	G	G	G	The law establishes that a salaried employee is usually referred to as an "exempt" employee. In general, exempt employees are those who hold professional, administrative or executive positions. Misclassification of employees can lead to expensive overtime charges and penalties.
Have all signs required by state and federal law been posted?	G	G	G	G	Federal and state law requires that all businesses post signs relating to employee rights. This is a simple compliance issue that can be managed by getting your signs yearly at compliancesigns.com

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Independent Contractor Issues

If your company uses any independent contractors on a regular basis, does it have written contracts with them that make it clear they are not employees?	G	G	G	G	Often a business will treat someone working for it as an independent contractor even if they are regularly working for the company. In many instances, the person wants it this way, so they do not have to have taxes taken out of their check. There are a host of pitfalls for a business on this front from tax liability, wage claims and worker's comp assessments.
If your company regularly works with independent contractors, have you ensured they have filed their affidavits with the state workers' compensation commission that they are not employees?	G	G	G	G	Many states allow people working for a company to confirm they are independent contractors (for the purposes of workers' compensation laws) to file an affidavit with the state that precludes the state from assessing workers' compensation penalties against the company.
Do you have non-solicitation, non-compete, and non-disclosure agreements with all your independent contractors?	Y	G	G	G	The enforceability of these provisions is more problematic for independent contractors than for employees. That said, you miss every shot you do not take.

Customer Vulnerabilities

Do you have customer contracts for all your customers with arbitration clauses, clearly defined payment terms, and that provide for interest for late payments?	G	G	G	G	Particularly in business relationships that are not a "one and done" transaction, having a written contract with your customer is an essential step to protecting your business.
Do you track your repeat customers, and can you state what percent of your business they are?	Y	G	G	G	Repeat customers are very frequently a high indicator of the health of a business. This is not a legal matter, but if you are in a business that should have loyal customers and you do not have them, you have a huge vulnerability.
If you bid jobs, do you have a well-prepared bid form with terms and conditions for payment, interest, arbitration, and other protections attached?	G	G	G	G	Many contractors, service companies and other types of business do not have clear terms and conditions that they get a client to approve even if only by initialing the back page of a carbon form. This creates a written enforceable contract with clear terms in a way that has served many of our clients very well.

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Does your customer contract protect you from a customer taking key employees away from your company?	Y	G	G	G	If there is the potential that a customer might hire one of your employees away from you and take the work in house, this is a sound provision to put in your customer contract.
Do you have any outstanding account receivable problems?	G	G	G	G	Account receivable issues are common in many industries. There are contractual and other methods to limit your vulnerabilities to customers who choose not to pay their bills.
Have you identified your “brand promises” that make your company stand out from the competition?	Y	G	G	G	The competition is always a vulnerability, but they are a whole lot less of one if your products or services are top quality and if customer experience leaves them in the dust. The key to the latter is identifying what customers in your markets hate and fixing it with your brand promises.
Do you quickly resolve customer complaints?	G	G	G	G	An angry customer is a problem and can become a big problem to your reputation. That said, an angry customer is also a great opportunity to fix underlying issues and build lasting loyalty.

Vendor Issues

Do you have your vendor contracts reviewed by an attorney before signing or cancelling them?	G	G	G	G	Many of our client bring us issues we could have helped them avoid if we had reviewed their vendor contracts before they signed them. We like to say, “Law is like dentistry, you can do it yourself, but you probably shouldn’t.”
Do you have a request for proposals process to ensure you are getting the best vendor for your business?	Y	G	G	G	When you bring on a key vendor, they can be critical to your success or failure. Rather than letting one salesman sell you, we advise our clients to get proposals from several potential vendors. Sample RFPs are readily available on the internet.
Do you have any personal guarantees on any vendor contracts for your business?	G	G	G	G	One reason for having limited liability is to not be personally responsible for the obligations and debts of your company. You should avoid guaranteeing any contracts of your company.

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Is your company current on all its payments to its vendors?	G	G	G	G	This is the converse to the accounts receivables question in the sense that if you are behind on your payments to a vendor you are vulnerable to losing the service or worse, getting sued.
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Financial and Revenue Issues

Do you have two people, aside from you, regularly keeping an eye on the billing, deposits, and expenses? Do you have a monthly financial meeting where you review your year-to-date P&L every month?	Y	G	G	G	Embezzlement is a real problem for businesses and a bookkeeper with sticky fingers is a common occurrence. The way to manage this is to have two unrelated people with no common interest involved in the financial management.
At the start of every year, do you prepare a forward-looking budget with revenue goals?	G	G	G	G	Setting goals is critical and doing it in a detailed way will drive you to perform better, presuming you routinely review and assess your performance.
Is your business current on all tax liabilities to the state and federal governments, and are you setting aside enough money to remain current on your upcoming tax liabilities?	G	G	G	G	The taxman will always get his "share" and getting behind with him is not fun.
Does your business have three months overhead in cash reserve?	Y	G	G	G	There are two sides to this: 1) Businesses with cash can capitalize on opportunities. 2) A rainy-day fund prevents a lot of bad decisions made in a panic.
Do you have one customer that is more than 15 % of your company's revenue?	G	G	G	G	This is a vulnerability many companies do not consider. Instead, business owners think having a huge customer or two is a great thing. It can be but it is also a HUGE vulnerability because one decisionmaker can put a big dent in your revenue.
Does your business owe a bank or creditor more than three months of overhead?	Y	Y	G	G	This is the converse of having cash reserves. Debt can be a strangle hold depending on how it is structured.
Do you have any personal guarantees on an indebtedness of your company?	G	G	G	G	One reason for having limited liability is to not be personally responsible for the debts of your company. As pointed out with vendor contracts, you should avoid guaranteeing any debt of your company.
Is your company in default or behind on payments for any loans or indebtedness?	G	G	G	G	Being behind on debt payments is a rather obvious and dangerous spot to be in.

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Is your business growing by more than 20% each year and able to service any debts?	G	G	G	G	We believe if you are not going forward, you are likely going backwards. Our core customers are ambitious business owners, so we might be a little biased here, but we do believe that growth is a solid remedy to a lot of vulnerabilities.
Do you have a fully trained person or dedicated company processing your payroll?	G	G	G	G	Payroll mistakes can be expensive to fix, and we have not found much sympathy for our clients from the various departments of labor. Payroll is also like dentistry; you can do it yourself but probably shouldn't.

Property Issues

Do you have premises liability coverage for all locations your business operates?	G	G	G	G	Many companies get a basic policy and forget to make sure it covers all their locations.
If you buy real estate or have leases, do you have the documents reviewed by an attorney?	G	G	G	G	An attorney should review both. Problems are more common with leases because business owners tend to treat them more casually and sign them. Issues can include out of state venue clauses, exorbitant common area maintenance charges and escalation clauses.
Do you have written leases for all real property your business uses including any you personally own?	G	G	G	G	If renting from another company, most businesses will have a lease. The catch comes when a business owner rents from themselves. Doing this can be a good investment, but you need a lease in place in case the IRS audits. Having a different LLC own the property is a sound idea.

Insurance Issues

Have you thoroughly assessed the dollar value of the risks associated with running your business with an insurance agent or attorney?	Y	G	G	G	Taking thirty minutes with your lawyer and your insurance agent can make a huge difference in accurately assessing how much insurance you really should have. Many companies are underinsured. The good news is the higher levels of insurance are a lot cheaper than the first \$ million in coverage.
Do you have a commercial general liability policy?	G	G	G	G	This is a foundational question, but it is one of the first boxes you should check.

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Do you complete an annual insurance checkup with your agent to assess your coverage for the extent of your risk and obtain quotes?	Y	G	G	G	On top of accurately assessing risk, this process lets you go shopping. Many times, you will find a lot better pricing on insurance, though some companies will jack up an introductory rate after the first year.
Do you have key man insurance on all your leadership team?	R	Y	G	G	The company should have life insurance on all the key members of your business. This means the ones that would create a disaster for you if they unexpectedly died. Life insurance can be a strategy for ownership buyouts too.
Does your company have cybersecurity insurance?	G	G	G	G	In this day and age, hackers are a “when” question and not an “if” question. The right software is essential to protect against hackers, but this insurance is important because data breach claims and business interruption can be very expensive.
Does your liability insurance include coverage for trademark, copyright, or patent infringement claims?	G	G	G	G	Accidental infringement on another’s intellectual property happens frequently. Insuring against their claims is a sound idea.
For corporations or LLCs, are directors and officers insured for liability (i.e., D&O insurance)?	R	Y	G	G	You should have this coverage to protect your management from being drug into lawsuits.
For professionals, do you have malpractice or errors and omissions insurance?	G	G	G	G	Similarly, if your company has professionals as employees, they can be brought into suits against the company for professional malpractice in most states.

Digital and Web Issues

Do you have your all computer data backed-up off-site?	G	G	G	G	This is a 101 foundational move as simple as signing up with Carbonite, Mozy or any other provider. You would be shocked at how frequently business owners lose all their data.
Do you have your anti-virus and anti-phishing software installed on all your business’s computers?	G	G	G	G	This also is a 101 move and is the front line of defense against hackers and other computer issues. It is surprising how many businesses ignore this.
Do you have an email archive for all emails coming into and going out of your business?	G	G	G	G	This is incredibly cheap and a great way to protect the company from dishonest employees and to prevent losing evidence you might need in a lawsuit.

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Do you have a contract with your website developer that makes it clear you own the website and domain and that also assigns to your company all the content used on the website?	G	G	G	G	Website developers are a problematic lot to deal with in our experience. Many business owners have their website put together on a handshake deal. This is the digital face of the company and can be a huge asset. It is worth making sure you have the rights to it!
Do you have a contract with your website developer that requires the website developer to indemnify you against claims of copyright infringement?	G	G	G	G	We spoke to a gentleman recently who was being sued because his web developer used pictures without buying the right to use them. This is a line item you need in the contract with your developer.
Do you regularly review your online presence to check for negative reviews or comments?	G	G	G	G	Bad online reviews and comments can devastate your business. Conversely, positive reviews can drive a business. You should regularly audit these things and if you rely on searches to bring in business, you should check your Google presence in incognito mode.
Do you own all internet domains related to your business?	G	G	G	G	Internet domains are cheap, and you should own all that reasonably relate to your business in “.com.”
Does your website have a privacy policy and terms of use?	G	G	G	G	This too is a 101 move, but make sure you have it.
If you use internet marketing and specifically AdWords, do you have a cap on the charges for every month?	G	G	G	G	If you use AdWords, make sure you set a budget. If not, the competition or your ex-girlfriend can “pay per click away” at your expense, breaking your bank and marketing strategy.

Regulatory Matters

If your business requires a license, do you have an annual procedure to make sure you comply/renew?	G	G	G	G	This can be as simple as putting a repeat tickler in your calendar.
If your business is regulated by a particular agency or bureau, are you fully aware of the regulations you must comply with?	G	G	G	G	Many businesses, including ours, are highly regulated. Really knowing the rules that apply to you, not only keep you out of trouble, but it can also be a huge advantage over your competition who is stuck in regulatory hell.

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Intellectual Property Matters					
Have you conducted an intellectual property (IP) audit to assure your IP assets are protected?	Y	G	G	G	Frequently, our clients have valuable IP they should protect and guard against allowing their competition access/unfair advantage.
Do you use a trade name, trade secret, word, phrase, slogan, or logo to distinguish your products or services from those of your competitors, and have you protected it as your intellectual property?	G	G	G	G	IP protection is not as “scary” as it sounds. For instance, just using a business name gives you common law trademark protection in that market. While not as good a registering, there is some protection there. The question becomes, when should you take it to the next level and register with the government? We regularly help our clients assess that.
Are you placing copyright protection on all original works of your business?	G	G	G	G	Copyright also has common law protections, but you can land in court fighting over it. The simplest way to assert a copy right is to add a © (which Microsoft Word creates when you type: “open parentheses, small c, close parentheses”). Again, the question becomes, when should you take it to the next level and register with the government?
Are all your inventions, processes, machines, manufactures and compositions protected by patents?	G	G	G	G	Patents are complicated and relatively expensive. They can be the cornerstone of your business though. We do not file for patents but have several referral attorneys we routinely work with.
Do you have an invention agreement in place, covering your business associates, employees and independent contractors, obligating them to assign all patentable inventions they create and copyrightable materials they author while working for your company?	G	G	G	G	Invention agreements make sure there is no question who, your company or the people you are paying, get the rights to the IP developed on the job. These are simple agreements and can protect the company from losing valuable assets.

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