

SOUTH DAKOTA

LEGAL NOTES

AUGUST 2014 | INFO@SWIERLAW.COM | WWW.SWIERLAW.COM

Four Pieces of Legal Advice that South Dakota Business Owners Should Ignore



As a current (or potential) small business owner in South Dakota, you've undoubtedly received plenty of advice - good and bad.

Here are the first two pieces of "bad" legal advice that you should quickly disregard:

1. "Just get the business going and worry about legal issues later."

One of the worst pieces of advice given to South Dakota small business owners is to delay the "legal issues" until your business achieves a certain income.

Delaying the "paperwork hassle" and "legal fees" may sound like good business strategy. However, failing to incorporate could result in your personal liability for injuries or damages. For instance, if your flower shop delivery driver accidentally hits a motorcyclist, there could be serious legal consequences.

Also, avoiding the "legal issues," such as forming a corporation or limited liability company (LLC), can result in expensive litigation to resolve later disputes about company structure, company ownership, and company profit distribution.

2. "Bypass the attorney and go online."

Generic legal documents are all over the Internet. Unfortunately, these documents are probably inadequate for your business and may leave you exposed to future legal problems. Every business document must be tailored to your specific situation.

Relying on online legal advice is also risky.

Unfortunately, you may spend a significant amount of time and money trying to "unring the bell" and undo what you've already done based on bad online advice.

3. "Noncompete agreements are worthless."

Small business owners often believe that noncompete agreements "are not worth the paper they're written on." This is simply not true.

In South Dakota, noncompete agreements can be enforced under certain conditions. For some small businesses, a well-drafted noncompete agreement is often one of its most valuable legal documents.

4. "Always designate your 'employees' as 'independent contractors.'"

Most small business owners worry about initial start-up costs and continuing overhead expenses.

One popular "myth" that small business owners often hear is that designating your workers as "independent contractors" and not as "employees" is a great money-saving technique.

However, there are strict legal definitions of employees and independent contractors. And any business that misclassifies its workers can create significant legal liability relating to taxes, workers' compensation, wage-and-hour issues, and unemployment insurance.



South Dakota Farm Real Estate Values Up 17.4% From 2013

Commodity prices may be down, but land prices remain on the rise, according to the latest USDA Land Values Summary, published Aug. 1, 2014.

A state-by-state analysis reveals land values spiked most in the Dakotas. North Dakota and South Dakota were the No. 1 and 2 gainers, with respective increases of 22.5% and 17.4%. Kansas was third with a 17.1% increase.

Article taken from <http://www.agweb.com>:

Commodity prices may be down, but land prices remain on the rise, according to the latest USDA Land Values Summary, published Aug. 1, 2014.

The United States farm real estate value, a measurement of the value of all land and buildings on farms, averaged \$2,950 per acre for 2014, up 8.1% from 2013 values. Regional changes in the average value of farm real estate ranged from a 16.3% increase in the Northern Plains region to a 1.1% increase in the Southeast region. The highest farm real estate values were in the Corn Belt region at \$6,370 per acre. The Mountain region had the lowest farm real estate value at \$1,070 per acre.

A state-by-state analysis reveals land values spiked most in the Dakotas. North Dakota and South Dakota were the No. 1 and 2 gainers, with respective increases of 22.5% and 17.4%. Kansas was third with a 17.1% increase.

U.S. cropland value increased by \$290 per acre (7.6%) to \$4,100 per acre from the previous year. In the Northern Plains region, the average cropland value increased 13.6% from the previous year. However, in the Mountain region, cropland values decreased by 5.1%.

The United States pasture value increased to \$1,300 per acre, or 11.1% more than 2013. The Southeast region had the smallest percentage increase in pasture value, 0.5% more than 2013. The Northern Plains had the highest increase at 26.5%.

Mike Walsten, Pro Farmer LandOwner Editor, says land auction prices have been red hot in 2014. A few recent examples have included a \$19,700 an acre in Northern Iowa, acreage in Nebraska that went for as much as \$10,400, and a series of central Illinois farms sell between \$10,000 to \$14,000 earlier this year, he says.

Illinois may be home to one of the next hot farm auctions, explains Kenny Schum, a Murray Wise Associates agent preparing a September 12 auction of 294 acres of productive farmland in McLean County (Ill.).

"It isn't every day you see a Central Illinois farm like this with good soils, an excellent productivity record and on-site grain storage and sheds, as well as a house," he says. "The auction includes 272 tillable acres, with the cropland primarily on two of the three tracts."

Brooke Swier Schloss Appointed to South Dakota Bar Association's Family Law Committee

Brooke Swier Schloss of Swier Law Firm was recently appointed to serve on the South Dakota Bar Association's Family Law Committee.

The State Bar Association's Family Law Committee maintains and improves the practice of family law through effective interaction with the courts and by informing lawyers and the public of current legislation and regulations. The Family Law Committee focuses on all matters relating to marriage, dissolution, custody and support, and adoptions.



Understanding "Forum-Selection Clauses" in South Dakota

A forum-selection clause is a contract element that allows the parties to agree that any lawsuits resulting from that contract will be initiated in a specific forum.

In South Dakota, our Supreme Court has found on numerous occasions that parties "may contractually specify and consent to a state's jurisdiction over legal actions which arise under a contract." *O'Neill Farms, Inc. v. Reinert*, 2010 SD 25, 780 N.W.2d 58. Furthermore, "forum-selection clauses are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances." *Klenz v. AVI Intern.*, 2002 SD 72, 647 N.W.2d 734. The burden is on the resisting party to make a strong showing that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.

In reviewing a forum-selection clause, South Dakota courts consider these six factors:

- The law which governs the formation and construction of the contract;
- The residency of the parties;
- The place of execution and/or performance of the contract;
- The location of the parties and the witnesses probably involved in the litigation;
- The availability of remedies in the designated forum; and
- Whether the drafter "has a special interest in limiting the fora in which it potentially could be subject to suit."

Swier Team NEWS...

Chris McClure Featured on KSFY-TV

On Friday, August 15, 2014, Swier Law Firm's Chris McClure was featured on KSFY-TV.

McClure served as KSFY's expert legal commentator for the story - "The Right to Protest Peaceably Comes With Responsibility."

Watch the video clip at KSFY.com





Proud Sponsor of the KSFY Pigskin Preview

Swier Law Firm is a proud sponsor of the KSFY Pigskin Preview this year, which supports South Dakota high school football players! We had a commercial featured in the Pigskin Preview Pre-game show on KSFY! Here is a photo of Scott on the field with his little co-stars filming the 2014 commercial. They all had so much fun doing the commercial and it turned out awesome! It aired during the Pigskin Preview and also the first Vikings pre-season game!



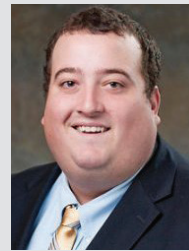
Chris McClure



Brooke Schloss



Scott Swier



Maxx Hickey



Jake Fischer

SWIER LAW FIRM, PROF. LLC

AVON OFFICE

202 N. Main Street, P.O. Box 256
Avon, SD 57315

p: (605) 286-3218 | f: (605) 286-3219
toll free: (888) 864-9981

CORSICA OFFICE

240 E. Main Street
Corsica, SD 57328

p: (605) 286-3218 | f: (605) 286-3219
toll free: (888) 864-9981

SIoux FALLS OFFICE

5024 W. Bur Oak Place, Suite 214
Sioux Falls, SD 57108

p: (605) 275-5669 | f: (605) 286-3219
toll free: (888) 864-9981

WINNER OFFICE

142 E. 3rd Street
Winner, SD 57580

p: (605) 842-3373 | f: (605) 842-3375
toll free: (888) 864-9981

info@swierlaw.com | www.swierlaw.com

