

# BizCenter News

## April 2006



### Director's Note

There is one thing that often catches small business owners by surprise—unexpected legal issues. Small business owners are generally focused on the immediate - working hard to run the business, grow the business, bring in new business, hire the next employee, take care of current customers. Often they do not have the time to read up on new laws, changes in existing laws or do the research necessary to understand the intricacies of various laws. We hope that this issue of the MHCC SBDC newsletter will help you have resources at your finger tips when trying to deal with legal issues related to running a small business.

### *Focus of the Month: Legal Issues*

#### Guest Columnist

Rodney A., Barker, Owner  
Mustard Seed Publishing

#### The Implied Warranty Trap

Lurking behind each corner and waiting for the arrival of each customer is the possibility of an implied product warranty. Small business owners must be continually aware of the many traps that are awaiting them when it comes to the warranty game. As a business owner myself, I am in the game with you. We love to advertise "Guaranteed" "Warrantee against defects" or conversely "As Is." But what happens with our products if we choose to say nothing at all in written form or oral? Are the warranties gone? This is the warranty trap that many small business owners fall into. (continued on page 2)

#### Legal Resources Available On-line through Inc. Magazine

A Business Owner's Guide to Preventive Law  
<http://www.inc.com/articles/1997/01/13158.html>

Ten Things to Watch for Contractually when Working with a Website Developer  
<http://www.inc.com/articles/1998/01/10127.html>

#### Anti-Discrimination Law

[http://www.inc.com/articles\\_by\\_topic/legal-employ\\_law\\_regulation-anti\\_discrimination\\_law](http://www.inc.com/articles_by_topic/legal-employ_law_regulation-anti_discrimination_law)

#### Litigation vs. Arbitration

<http://www.inc.com/magazine/20040201/arbitration.html>

#### Recommended Reading

Legal Guide for Starting and Running a Small Business  
By Attorney Fred Steingold and Ilona Bray

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Member of the Oregon  
BizCenter Network

#### *What our clients say about us!*

"In 21 years in business, I've taken hundreds of seminars and training courses. None has been more informative, motivating, and fun than the Small Business Management program...the program has given me tools and motivation to more aggressively market my business and engage in more sales." Patti Kaplinski, Owner, Artwear

Visit us on the web!

[http://www.mhcc.edu/  
pages/1092.asp](http://www.mhcc.edu/pages/1092.asp)



MHCC BizCenter  
323 NE Roberts Ave  
Gresham OR 97030  
(503) 491-7658  
(503) 666-1140

[www.bizcenter.org/gresham](http://www.bizcenter.org/gresham)



## Seminars for New and Established Businesses



### Start Smart: Going into Business in Oregon or Doing It Right from the Start

Get your start-up questions answered here! This class is a must if you have a business idea or just opened your doors but still have some questions! What should you know before getting started? **Dates:** May 10, June 14 6:00 – 9:00 P.M.

(Attend one only.)

**Instructor:** Julia Peterson, MBA

**Fee:** Free

### Workers' Compensation Employer Coverage

This seminar will cover a variety of issues related to Workers' Compensation from the employer's perspective: Why do you need it? Who needs it? What are the penalties if you don't have it? How can I reduce my cost? Understanding the insurance contract and the Preferred Worker Program.

**Date:** Friday, May 12, 9:00 A.M.-12:00

**Instructor:** David Waki, Employer Compliance

**Fee:** Free

### Financial Diagnosis: What Do All of These Numbers Mean and How Can They Help Me?

To build a sound, long lasting, profitable company, having a solid understanding of financial statements and basic financial management concepts is essential. Come learn what kind of story your financial statements tell?, the importance of cash and ways to generate it, and how to gain insight into the management of your business by calculating and analyzing liquidity ratios, operating ratios, leverage ratios, profitability ratios, bankruptcy predictors and market valuation. You will receive a complimentary Excel worksheet to assist you in telling the story of your business. You will also receive a free one-on-one appointment with a financial counselor at the MHCC SBDC to assist you in interpreting your financial statements.

**Date:** May 23, 6:00 – 9:00 P.M.

**Instructor:** Karen Carroll, Financial Consultant

**Fee:** \$25

### QuickBooks

Discover why this bestselling software continues its remarkable popularity. Lessons emphasize the fastest, easiest way to use QuickBooks; producing an accurate monthly profit and loss statement; and simulation of typical monthly bookkeeping functions in QuickBooks. The course is taught by a small business owner and is designed for small business owners. Upon completion of the course, you will receive a free one hour consultation with the instructor to set up QB for your business or to review the QB set up of your current business.

**Dates:** May 4, 11, 18, 25 from 6:30-8:55 P.M. at the Maywood Center.

**Tentative Instructor:** Marilyn Peterson

**Fee:** \$85

### Business Plan Development: Setting Goals and Objectives and Making Them a Reality

So you want to run a successful business! With no direction you get nowhere! Learn how to map out your goals and turn your business ideas into a solid plan for long-term success. With the support of your instructor, you will work through all of the major components of a business plan and emerge with your first draft in hand.

**Dates:** May 4, 18, 25 from 6:00 – 9:00 P.M.

**Instructor:** Julia Peterson

**Fee:** \$85

*All seminars are held at the MHCC SBDC at 323 NE Roberts Drive in Gresham. To register, call (503) 491-7658.*

### Implied Warranties (continued from page 1)

No matter the business that you may be in, there are warranties that may apply. Whether your business is selling fast food, canned goods, shoes, construction materials, or you are building a house, there are warranty protections for the public that business owners need to be aware of. There are several types of warranties that the law recognizes: 1) Warranty of Title, 2) Warranty against infringement, 3) Implied warranty of merchantability, 4) Implied warranty of fitness for a particular purpose, and 5) Express warranty.

**The Warranty of Title Trap.** This is a simple matter. If you are selling any type of tangible goods, as the seller you are making a warranty to the buyer that the title transferred is good, and that there are no liens or encumbrances against the title of which the buyer is unaware at the time of purchase. This simply means that the seller has the right to sell the item to the buyer, and the buyer takes it free from unknown encumbrances.

**The Warranty Against Infringement Trap.** This does not tend to be an issue for most businesses. This warranty again holds the sellers feet to the fire in that every item sold contains a warrant that it is free from patent, trademark, copyright, or similar claims at the time of delivery. No disclaimers will generally aid the business owner if an infringement is found.

**The Implied Warranties Trap.** First, the implied



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warrant of merchantability applies specifically to merchants that are in the business of selling goods of that specific type. For example, a shoe store that is selling shoes or shoelaces would be a merchant dealing in goods of the kind, but a shoe store that just happens to sell an air conditioner one time would not be subject to this warranty generally. This warranty warrants that the goods are fit for the ordinary purpose for which the goods are used. This simply means that a shoe store that sold a pair of shoes warrants that the shoes are of reasonable quality for the ordinary purpose of wearing them on your feet and walking in them on regular surfaces.

Second, the Implied Warranty of Fitness for a Particular Purpose Trap. This is the largest trap in my opinion. In this situation the seller does not have to be a merchant of the kind as in the first implied warranty; rather, this applies to any seller that happens to know of the particular purpose that the goods are being put to use or that the buyer is relying upon the goods to perform for a particular purpose and the seller knows of it. Or, the buyer is relying upon the seller's skills and judgment to select suitable goods for the particular purpose for which the good is being purchased. This will impose a warranty upon the business that the customer may seek a remedy. Both of the implied warranties may be disclaimed by conspicuously displaying terms such as "as is" or "with all faults."

The Express Warranty Trap. It is difficult to refer to this warranty as a trap at all since expressed warranties are simply the statements made either oral or written by the seller. Nobody is forcing the seller to make such statements, so the trap is only in limiting the warrants that you are making to the buyer. That is to say, do not say something that you do not intend to enforce. Generally, this warrant may also be disclaimed by conspicuously displaying terms such as "as is" or "with all faults."

It would be difficult to count all the warranty problems that arise in the day-to-day running of a business. Although, we can see hat

about six cases in the last 3-years concerning Implied Warranties have made it to the Oregon Court of Appeals, but the much larger number would be the many times a business owner is hailed into small claims court. If the court finds there has been a breach of an implied warranty, the damages to be paid are Consequential damages, which include: 1) Any losses that are the result of the breach of warranty so long as the seller had knowledge at the time the product was purchased of the use the product would be put. 2) All injuries to persons that are the result from the breach of the warranty.

The focus should not be on how to win a lawsuit; rather, the focus should be on a more important aspect, which is the future of the unhappy customer. A customer that is disgruntled due to the performance of a product, which may give rise to an implied warranty, is less likely to continue to patronize our establishments. The old adage "It is easier to keep a current customer than to win a new one" applies here. In the end, we business owners need to be cautious and aware that we are making warranties of our products every time something goes out our door.

### Talking to Your Attorney

Provided by the Oregon Network of BizCenters  
At [www.bizcenter.org](http://www.bizcenter.org).

The following is a checklist of topics that your business may need to discuss with your attorney when starting a business. The list should also be periodically consulted by owners of existing businesses because some of the topics covered may not apply until a business has operated for a few years.

- Choosing the proper business entity
- Preparing agreements for employees
- Adopting benefit plans
- Preparing standard business agreements
- Purchasing or leasing office space
- Protecting intellectual property
- Website issues
- Acquisitions and mergers

## Services Available to Small Business Owners through the Economic and Workforce Development Division at MHCC

### Customized Workforce Training

- Call (503)491-7325

### Community Skills Center

- Call (503) 491-6122

### Workforce Connections

- Call (503) 252-0758

### Steps to Success

- Call (503) 256-0432

### Community Education

- Call (503) 491-7571

## At the BizCenter you can . . . develop skills in our workshops and seminars.

- Network with other owners and learn business practices in one of our comprehensive business management programs.
- Develop strategies to improve your business with the help of a business advisor.
- Find assistance in writing a business plan, developing a loan proposal or preparing your financials.
- Find helpful information in the books, literature and internet access in our business resource library.

For more information on the MHCC Small Business Development Center, please contact us at (503) 491-7658 or at [BizCntr@mhcc.edu](mailto: BizCntr@mhcc.edu). You can also stop by and visit us at 323 NE Roberts Street in Gresham.

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