

# Contracts BULLETIN



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## Bulletin #68, How Do You Sign a Contract? (June 27, 2003)

The title of this article seems ridiculously simple. You just sign your name on the dotted line – correct?  
**NO!**

The difference between personal financial ruin, and just another day at the office can be:

By: \_\_\_\_\_  
John Smith

and

**ZZZ HVAC, INC.**

By: \_\_\_\_\_  
John Smith  
Its: President

Is this really such a big deal?

Sounds like a bunch of legalese, right? **WRONG!**

It is a pain, and it may seem silly, but if you don't want to be held **personally** liable for the contracts you sign, then you must sign them properly. It is important to correctly sign contracts so your company (i.e., a "legal entity") is liable, and not you personally.

### What Is a Legal Entity?

A "legal entity" is a corporation, S-corporation, limited liability company, or other similar organization, recognized under the laws of your state. As far as the law is concerned, a "legal entity" is a separate and independent legal individual that can sign contracts, assume liabilities, and engage in most actions of a living person. The reason legal entities are created is because they allow people (that is, real and living persons like you and me) to avoid liability. In next month's article, I will discuss the various types of legal entities, how they are created, and the general advantages of the various types of entities.

Owners and managers of companies must put the rest of the world on notice that the entity exists. This is done by: (1) properly filing and creating the entity under state law; (2) identifying the entity's name along with its corporate status (e.g., **ZZZ HVAC, Inc.** or **ZZZ HVAC, LLC**); (3) properly signing contracts to demonstrate that you are signing on behalf of the entity and not yourself; and (4) maintaining proper

corporate separation and recordkeeping (this topic will be discussed in next month's article).

A legal entity limits personal liability. That is, if someone receives a huge judgment against an entity you control, only the entity will be required to pay the judgment. In a worst case scenario, the entity could cease doing business or file bankruptcy. As a shareholder or member of a legal entity, you will not be required to pay the judgment or file personal bankruptcy. Obviously, this assumes you have done everything to maintain your proper legal status of the entity (which we will discuss next month), and you have not provided any "personal guaranties" which could result in personal liability.

The fact that you may own all of the shares in ZZZ HVAC, Inc. does not mean it is you. You need to put the world on notice that you consider the entity different and separate from you. One of the most important ways you can do this is by properly signing contracts.

### **What Happens If You Sign Wrong?**

#### **Golf Dome**

There are many examples where a contractor had improperly signed an agreement, and been held personally liable. Several years ago, I represented a company which constructed an inflatable golf dome driving range.

The first paragraph of the construction contract between the owner and my client indicated: "This Agreement is by and between Golf Dome Builders, Inc. ("Contractor") and Minnesota Indoor Golf Corporation ("Owner")." *(I have changed the name of my client and the entities to protect confidentiality.)* The owner signed the contract as follows:

By: \_\_\_\_\_  
Tom Jones, Owner

We sued both Tom Jones, individually, and his company (Minnesota Indoor Golf Corporation), because Jones refused to pay my client (Golf Dome Builders, Inc.). We successfully argued at trial that **both** the entity and Mr. Jones personally should be liable, because he personally signed the contract. The court concluded that my client had properly constructed the dome, and it was entitled to a judgment against **both** Minnesota Indoor Golf Corporation and Mr. Jones.

This joint judgment allowed my client to collect over a hundred thousand dollars from Mr. Jones personally. Because this was not an insurable claim, Mr. Jones faced personal financial ruin if he did not promptly pay the judgment. We were able to obtain this judgment relying in large part on his signature with no mention of his company.

#### **Other Examples**

My experience is neither unique to Minnesota, nor rare in the courts. In Mullis v. Brennan, 716 N.E.2d 58 (Ind. App. 1999), an Indiana contractor brought an action against a homeowner for failure to pay for improvements. The homeowner asserted a counterclaim against the contractor alleging the work was defective. The homeowner argued that the contractor was individually and personally liable for the defective work, because he had improperly signed the contract. In particular, the contract between the parties was signed by Mr. Mullis as the "contractor." There was no reference to his legal entity, "Mullis Building Corporation."

The Indiana court rejected Mr. Mullis' argument that the homeowners understood Mullis intended to proceed as a legal entity, because the name, Mullis Building Corporation, was listed on his faxes. Moreover, the trial court found that Mr. Mullis had deposited money into his personal accounts (in next month's article we will discuss the importance of properly handling funds in maintaining a legal entity). As a result, Mr. Mullis was personally liable for the defective work.

Similarly, in Northeast Gunitite and Grouting Corporation v. Chapman, 565 A.2d 256 (Conn. App. 1989), a subcontractor who provided grout work signed a contract with a contractor. The contractor did not pay for the work, and the subcontractor sued the contractor personally. The contractor asserted his corporation should be liable. The Connecticut court rejected this argument holding that the contractor “did not affix any title, or indicate in his signature that he was signing in a representative [corporate] capacity.” Because the contractor did not put the word “corporation” after his company’s name, the court found that the contractor was personally liable.

### Signing Correctly

You are given a contract which lists your company name correctly in the first paragraph, but provides the following signature block at the end of the contract:

CONTRACTOR:

By: \_\_\_\_\_

OWNER:

BUILDING DEVELOPMENT INC.

By: James Bigshot  
Its: Vice President

### What Do You Do?

Based on our discussion above, it should be clear that you do not simply sign. Instead, you should modify the signature blocks by hand (which is allowed even if the contract is typed), or have the contract retyped to include the **full** name of your company and your title at the company. For example:

CONTRACTOR:

ZZZ HVAC LLC

By: John Smith  
Its: President

OWNER:

BUILDING DEVELOPMENT INC.

By: James Bigshot  
Its: Vice President

With this important change made, you can sign the contract. The world is now on notice that an entity, and not an individual, is signing the contract.

### Conclusion

When I recently reminded one of my clients that she needed to put “LLC” at the end of the name of her business when she signs contracts, she responded that she sees “Microsoft” all the time without the word, “Inc.,” “Corp.,” or “Company.” If Microsoft doesn’t always indicate that it is a corporation, why should her little company be required to do so? My response is simple: her small LLC is **not** Microsoft.

If you are operating a business entity, you **must** be diligent in letting the world know that you are operating the business as a separate legal entity. People running small companies need to be far **more** diligent in identifying themselves as legal entities.

If you are an HVAC contractor with a few employees, it is possible to be found to be acting personally (as opposed to through a legal entity). Therefore, it is especially important that owners of small companies properly sign their contracts.

It is a little thing that can make all the difference – sign carefully.

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