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A LegalZoom Horror Story

Tom Gordon in his Op-Ed piece of the January 29, 2015, edition of the Wall Street Journal, entitled “Hell Hath No Fury Like a Lawyer Scorned,” an excerpt from which article is attached, has little sympathy for the organized bar’s position that restrictions on the unauthorized practice of law are to “protect consumers.” He seems to feel that most of these laws are to protect lawyer’s incomes and speaks glowingly of the “dozens of online companies . . . providing consumers with document preparation and other self-help legal assistance.” As a practicing lawyer, I differ with his conclusions.

His approach underestimates the complexity of law and assumes that contracts, court pleadings and other legal documents consist nothing more than standard boilerplate provisions, stapled together. Undoubtedly there are a few legal matters that ordinary citizens can handle on their own. For example, I routinely refer folk with claims under \$10,000 to small claims courts where lawyers are not required and judges are patient and unhindered by a number of the rules that govern more formal courts. And yet, a client of mine recently tried to defend himself in one of those proceedings without a lawyer and ended up with a \$10,000 judgment against him that never would have been entered had he had competent counsel.

Let me give the best example I know of the costs of trying to handle legal matters without the assistance of a lawyer. I recently represented three young woman who had started a business operating as a limited liability company. In such a company, the owners are referred to as members, just as the owners of a corporation are called stockholders. After they had operated for a few months, they took on another member. They went LegalZoom and used its form for their expanded LLC. They all signed the form; it cost them \$100.

A few months down the road, the new member went south and refused either to participate in the work or to contribute funds. This was perhaps foreseeable; she was an ecdysiast by trade and her main selling point to the other three was that she had a boyfriend who had lots of cash. To the more experienced entrepreneur, this might have sent up red flags, but my clients felt they could trust her.

My clients went to several lawyers before they came to me, all of whom pointed out that there was no provision for removal of a non-performing member and opined that my clients would have to live with her. When the three women came to me, I gave them eight ways to divorce themselves from their laggard mate, none of them cheap or easy. When approached, the errant member lawyered

herself up, believing that the long-run value of the company was considerable. Lengthy negotiations ensued.

My clients were eventually able to get free of her without filing a lawsuit, but the cost was not insignificant. My clients had to give their ex-member back the \$15,000 she had invested in the company. Even with well-drafted documents they probably would have had to that. That was not a cost of using the on-line form; it was a cost of their bad judgment. But they also had to pay her another \$15,000 to buy out her interest in the company and ended up having to pay me \$10,000 in fees. This \$25,000 was the cost of their having used the LegalZoom form and not having conferred with a lawyer.

Every business that has more than one owner must have some provision for the participants to separate or divide up the business in case things do not work out. I wondered whether my clients had missed a step in the on-line process, that there was an exit provision, but that my clients simply chose not to use it. To find out, I went to the LegalZoom website and went through its process to form an LLC. At one point LegalZoom asked me, will there be more than one member in this LLC? I said yes. LegalZoom then asked what their names were, and nothing more. It did not ask: do you want an exit provision, do you want a way to remove nonperforming members?

My clients couldn't in fact have done that on *any* website. An exit provision, which every business entity with more than one owner should have, will vary drastically depending on the relationships between the participants. An exit provision regarding a married couple will take notice of divorce and community property laws; an exit provision with unrelated parties may be no more than a way for one participant to buy out another. There are numerous issues in any such provision; it is not a one-size-fits-all process.

But these complex provisions cannot just be served up raw on a website. Any lawyer worth his salt will tell you that the parties cannot choose among the myriad available alternatives for business divorces until the attorney has fully explained to his clients how those provisions work and what the consequences of each decision will be. He may want them to consider to what extent their assets will be protected, what the tax consequences will be, and other significant legal ramifications of their choices. The appropriate exit provision may even have to have special provisions based on the kind of business the participants are getting into, especially if the business is one that operates under a governing state or federal agency. That process, the process of finding out what it is that the parties want and how that goal can be best and most profitably reached without running afoul of the many laws that govern businesses, is what we lawyers call practicing law. It can only be done with technical knowledge and experience.

There may be a place for "self-help legal assistance," just as there is a place for "self-help surgery," but I suspect that in both cases those places will be narrower than Mr. Gordon imagines.

Excerpt from

Hell Hath No Fury Like A Lawyer Scorned,

By Tom Gordon, WALL STREET JOURNAL, 1/28/15

Jackie LaPlatney was fighting back tears as she entered the brightly lighted Watertown, N.Y., storefront called Legal Docs By Me in the summer of 2014. She told the store manager how her ex-husband had never been part of their now-teenage daughter's life, though the girl still bore his last name as an unwelcome reminder of their painful history. All her daughter wanted for Christmas that year was to be able to take the name of her stepfather instead.

Ms. LaPlatney's experiences up to that point had been frustrating and disheartening—she couldn't afford an attorney's high fees for a name change, which could be \$1,000 or more. The store's staff assured her that helping customers represent themselves was something the business did every day and quoted her a flat fee of \$249 that Ms. LaPlatney could afford. Ms. LaPlatney's daughter's name change was completed in a few weeks, in plenty of time for a merry Christmas.

Legal Docs By Me is just one example of the booming innovation currently going on in the market for legal services. There are thousands of storefront businesses nationwide providing services that empower consumers to handle tasks like name changes and uncontested divorces without a lawyer. In addition, dozens of online companies are providing consumers with document preparation and other self-help legal assistance. The flow of venture capital to these companies has been rising, increasing from \$66 million in 2012 to \$458 million in 2013.

But booming business and happy consumers have attracted the attention of the local bar association in Jefferson County, where Watertown is located, causing the New York attorney general to file suit last May against Legal Docs By Me for the unauthorized practice of law. The bar claims that unauthorized-practice restrictions protect consumers. In truth, bar associations often use them to crack down on competition from innovative new service providers, preventing people like Ms. LaPlatney from getting affordable legal assistance.