

Stupid Questions are Better than Stupid Mistakes

-Japanese proverb



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Prefacing a question with the disclaimer, "I know this is a stupid question," a client once asked me, "How should I sign this agreement?" His question was far from stupid

because when executing documents, including agreements, checks and letters, the form of the signature has legal consequences. When someone signs a document, the individual, not surprisingly, creates personal legal liability. If the individual desires the liability protection afforded by some form of entity such as a corporation or limited liability company, it is important that they effectively sign the document as the entity and not as the individual. Failure to do so has legal consequences and may create liability for that individual and the loss of the desired corporate protection.

For these reasons, the form of signature on any document including letters, checks or agreements, should appear as follows:

[Name of entity]

By _____

[Name, Title]

An example of this form is as follows:

ABC Company, Inc.

By _____

John Smith, President

It is not correct to put the name of the entity underneath the signature of the individual. Thus, the following signature format is not proper:

_____	or	_____
ABC Company, Inc		John Smith
John Smith		ABC Company, Inc.

The name of the company should always go above the signature line. The signer should always be signing on behalf of the entity which is the reason for putting the word "by" in front of the signature line. Putting the title of the individual after the individual's name is important because it further

illustrates that the individual is signing in that capacity on behalf of the company as an officer and not as an individual.

Be wary of form documents generated by companies in business transactions for signature by builders that frequently do not properly protect against personal liability. Often, and even worse, the documents helpfully include a large "x" with a "sign here" sticker attached. Do not ignore this mistake. Request that the document be changed to show the signature in the proper format or strike through the improper set-up and correct the signature.

Similarly, verify that the invoices and documents received in business transactions accurately reflect the proper entity involved in the deal. Builders or their lawyers frequently set up separate companies to manage risks associated with a deal by isolating the risks in separate companies. Creating these different companies helps insure that liabilities arising from particular transactions remain with the one entity created for that transaction. If a judgment is obtained, a plaintiff may collect only from the intended company's assets and not from those of the builder's other companies.

Carefully crafted legal structures can be undermined by failing to pay attention to simple matters like the name or signature on a document. For example, your regular vendors may often fail to update or correct their invoices to properly name your business entity in a deal. The person responsible for reviewing proposals, preparing contracts, processing invoices and depositing checks must be vigilant to routinely check for and correct these mistakes. A builder should promptly notify its vendors of any name change or correction, and should itself be diligent in requesting proposals using the correct legal name to avoid delays in payment caused by the need to get corrected invoices or checks.

Thus, for builders and their documents in this political season, you might say there is really no such thing as a stupid question. **EN**