

Protect Your Business From Risk

by Christopher G. Hill

I'm an attorney that specializes in helping construction companies deal with liability issues. Liability essentially means the financial consequences of failing to perform a job properly. For deck builders, this comes down to paying for damage to property or a person caused by poor or negligent work, during or after construction.

The first step in protecting your business from risk is the obvious: Adhere to the permitting, occupational safety, and building code requirements that govern your project. Building codes and OSHA requirements provide only minimum standards and meeting them won't always shield you from liability, but if you fail to meet them and something goes wrong, liability is assured.

Setting realistic expectations can also help limit liability. Homeowners do not regularly deal with construction, and they bring a layer of emotion to the business relationship, as it's their home you're working on. Therefore, you need to be very specific in your explanation of the work and the steps to be taken to complete that work. What a deck builder considers a given won't necessarily occur to the typical homeowner. For example, explaining that extraordinary events like hurricanes

can cause leaks where even a perfectly built deck meets the house can go a long way toward avoiding claims for property damage.

When you can't be at a site for the entire project, train your employees in procedures and safety rules. Your insurance company may have resources to help you develop a formal safety program; another resource is the NAHB-OSHA *Jobsite Safety Handbook* (builderbooks.com), which hits the highlights of construction safety. Make sure that your employees screen off dangerous areas, and that supervisory employees have a checklist of things to look out for when in the throes of a deck build. Have them explain to the homeowner about the building process and associated hazards.

This brings us to insurance. Your state may require general liability insurance, which covers you in the event of a claim for property damage or personal injury at one of your sites. Even if your state doesn't require it, you should carry liability insurance that will pay for your legal defense and any judgment or settlement, up to the policy's limit.

In addition to buying insurance, forming a corporation or LLC is a fairly simple way to protect the personal

assets of the principals of a company. Incorporation puts a barrier between your personal assets (your home, your car, and even your dog) and your business assets that can be breached only in limited circumstances. If you end up in court and your company is not an LLC or a corporation, a creditor or injured homeowner can — and will — go after your personal assets.

While the above are important, training employees and properly supervising the job site are the best ways to avoid problems. Visit each job site regularly to determine if it has any characteristics that could present unique liability scenarios (from small children or dogs to weird terrain) and therefore require heightened protection and supervision. Keep tabs on how your employees are acting and performing on the site.

Residential contractors can't anticipate every liability scenario. However, following the steps outlined above should deal with most of them. ❖

Christopher G. Hill is an attorney in Richmond, Va. He blogs about construction law at constructionlawva.com.