

## BUSINESS LAW SUPPLEMENT

Legal work on certain business matters may create an increased risk of claims under ORS 59.115 (3) or ORS 59.137 (1), especially where investors are involved. This set of questions is designed to assist the PLF Excess Program in identifying possible risks in your Firm's business practice. No single question reveals an increased risk; rather, the entire set of questions helps to provide an assessment of the business related legal work your Firm performs.

**PLEASE ANSWER ALL QUESTIONS FOR THE PERIOD OF THE PAST 5 YEARS**

### **1. FIRM INTAKE & SUPERVISION PROCEDURES**

**1.1** Does your Firm have procedures (either formal or informal) to determine whether to accept a prospective business law client? ☐ **Yes** ☐ **No** ☐ **N/A** *If yes, please describe those procedures:*

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**1.2** Does your Firm have procedures (either formal or informal) to determine whether to provide legal services in connection with a particular business transaction or real estate transaction?

☐ **Yes** ☐ **No** ☐ **N/A** *If yes, please describe those procedures:*

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**1.3** How many lawyers at your Firm regularly handle business or real estate transactions or regularly advise clients on such transactions? \_\_\_\_\_

**1.4** Does your Firm use any (either formal or informal) internal procedures to monitor, oversee or supervise the legal services being performed in connection with business clients, business transactions, or real estate transactions? (For example, holding practice group meetings or mentoring junior lawyers). ☐ **Yes** ☐ **No** ☐ **N/A** *If yes, please describe those procedures:*

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### **2. BUSINESS ENTITY FORMATION, ORGANIZATION, & FINANCING**

**2.1** Has any lawyer in the Firm provided services in connection with the formation, organization, or financing of any business entity or organization? ☐ **Yes** ☐ **No** *If yes, check all that apply below. If no, skip to Section 3.*

	<b>Corporations</b>	<b>LLCs</b>	<b>Partnerships (incl. LLPs)</b>	<b>Limited Partnerships (LPs)</b>	<b>Other Business Entities</b>
A. Prepared subscription agreements, operating agreements, shareholder agreements, or other documents executed by business owners.					
B. Prepared offering circulars, private placement memoranda, disclosures, brochures, or other documents to be reviewed by potential investors.					

If you checked "Other Business Entities" (above), please describe the entities or organizations you assisted and the documents your Firm prepared: \_\_\_\_\_

**2.2** Approximately what percentage of your Firm's practice involved entity formation, organization, or financing as identified in question 2.1 above? \_\_\_\_\_%

**2.3** Does the Firm's work as described in question 2.1 involve any of the following industries?  
*Check all that apply.*

- |   |  |
|---|--|
| <input type="checkbox"/> Alternative Energy         | <input type="checkbox"/> E-Commerce                              |
| <input type="checkbox"/> Cannabis / Legal Marijuana | <input type="checkbox"/> Financial Services / Financial Advisors |
| <input type="checkbox"/> Emerging Industries        | <input type="checkbox"/> Real Estate / Development               |

**2.4** Check all below that describe your Firm's clients with respect to the services identified in question 2.1. We represented:

- ☐ The corporation/LLC/LP/other entity
- ☐ Promoters or founders of the corporation/LLC/LP/other entity
- ☐ Directors or officers of the corporation/LLC/LP/other entity
- ☐ Shareholders or investors in the corporation/LLC/LP/other entity

**2.5** For any of the legal services you identified in question 2.1 above, has a lawyer in your Firm acted as a director, officer, manager, LLC member, or otherwise participated in the management of a business client of the Firm? ☐ **Yes** ☐ **No** *If yes, please describe:*

**2.6** How often did your Firm form or organize business entities for entrepreneurs, promoters, or businesses that sought financing or funding from passive investors, meaning investors or owners who were not actively managing or operating the business?

- ☐ Never
- ☐ Less than once a year
- ☐ About 1–3 times per year
- ☐ About 4–10 times per year
- ☐ About 11–50 times per year
- ☐ More than 50 times per year

Briefly describe the entities formed: \_\_\_\_\_

**2.7** If any of your Firm's entity formation or organization work involved passive investors or business owners who were not actively managing or operating the business, how would you describe the passive investors or uninvolved owners?

<b>The passive investors or uninvolved owners were:</b>	<b>Most of the Time</b>	<b>Some of the Time</b>	<b>None of the Time</b>	<b>Unknown</b>
A. Family members (parents, siblings, spouses, in-laws, etc.) of the active owners.				
B. Close or longtime personal friends with the active owners.				
C. Introduced to the active owners through social, cultural, or religious organizations.				
D. Introduced to the active owners through paid finders or brokers.				
E. Modestly wealthy individuals with personal assets under about \$500,000 excluding their personal residences.				
F. Moderately wealthy individuals with personal assets in the range of \$500,000 to \$1 million excluding their personal residences.				
G. High net worth individuals with personal assets in excess of \$1 million excluding their personal residences.				
H. Had individual incomes in excess of \$200,000 or joint income with each investor's spouse in excess of \$300,000.				
I. Institutional investors, hedge funds, angel investors, real estate investment trusts, or other professional investors.				

**2.8** Does your Firm use any (formal or informal) internal procedures that allow more than one lawyer to review or monitor business transactions involving passive investors or uninvolved owners?

☐ **Yes** ☐ **No** *If yes, please describe those procedures:*

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**2.9** Was your Firm's name or the name of any lawyer in your Firm identified in offering circulars, private placement memoranda, brochures, or promotional materials provided to investors or potential investors? ☐ **Yes** ☐ **No** *If yes, please explain:*

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**2.10** With respect to any of the legal services identified in question 2.1 above, has your Firm received compensation in the form of an interest in the business, such as stock, an LLC membership interest, or a limited partnership interest? ☐ **Yes** ☐ **No** *If yes, please explain:*

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**2.11** For what types of LLCs did your Firm provide legal services identified in question 2.1? *Check all that apply.*

- |   |   |
|---|---|
| <input type="checkbox"/> My firm did not provide services for LLCs. | <input type="checkbox"/> Manager-managed LLCs                       |
| <input type="checkbox"/> Single member LLCs                         | <input type="checkbox"/> Professional LLCs                          |
| <input type="checkbox"/> LLCs used for estate planning              | <input type="checkbox"/> LLCs used for business succession planning |
| <input type="checkbox"/> LLCs used for investment                   | <input type="checkbox"/> LLCs used to hold real estate              |
| <input type="checkbox"/> Member-managed LLCs                        | <input type="checkbox"/> Other (describe): _____                    |

**2.12** Has your Firm provided services related to the sale of a business? ☐ **Yes** ☐ **No** *If no, skip to Section 3. If yes, please answer the questions below (using approximations).*

How many transactions did your Firm handle involving the sale of a business? \_\_\_\_\_

What percentage of the business sales your Firm handled involved stock sales? \_\_\_\_\_%

### 3. LOAN DOCUMENTATION

**3.1** Has your Firm or any lawyer in your Firm provided services in connection with the documentation of loans or loan collateral? ☐ **Yes** ☐ **No** *If no, skip to Section 4.*

**3.2** How would you describe the *lenders* in the loans noted above? *Check all that apply.*

- ☐ **Institutional lenders**, including loans made by banks, credit unions, mortgage companies, or other institutional or government lenders.
- ☐ **Non-institutional lenders** and loans:
  - ☐ Loans made by individual investors or groups of investors
  - ☐ Private money or “hard money” loans
  - ☐ Loans between family members
  - ☐ Bridge loans
  - ☐ Mezzanine financing loans
  - ☐ Other type of non-institutional loan (*describe*): \_\_\_\_\_

*Skip to section 4 if all of your Firm’s loan-related work involved institutional lenders.*

**3.3** With regard to the non-institutional loans you identified above, what services did your Firm provide? *Check all that apply:*

- ☐ Drafted or prepared promissory notes.
- ☐ Drafted or prepared trust deeds or mortgage documents.
- ☐ Prepared documents to create or perfect security interests under UCC, Article 9.
- ☐ Prepared documents used to describe loans to investors or lenders.
- ☐ Consulted with brokers or finders of loans.
- ☐ Other services (*describe*): \_\_\_\_\_

**3.4** What percentage of your Firm’s work involved non-institutional lenders or loans? \_\_\_\_\_%

**3.5** Approximately how many non-institutional loans did your Firm work on? \_\_\_\_\_

**3.6** With regard to the non-institutional loans, how were the lenders matched to the borrowers? *Check all that apply:*

	Yes	No	Unknown
A. A loan broker or finder assisted in making the loan and received a commission.			
B. The loan was made between close or extended family members.			
C. The loan was made between social friends or members of a social, cultural, or religious organization.			

**3.7** Check all of the following parties your Firm represented with respect to the loan-related services referenced above. We represented:

- |                                    |   |
|------------------------------------|---|
| <input type="checkbox"/> Borrowers | <input type="checkbox"/> Promoters or founders of the business entity or organization   |
| <input type="checkbox"/> Lenders   | <input type="checkbox"/> Managers, directors, or officers of the entity or organization |
| <input type="checkbox"/> Investors | <input type="checkbox"/> Brokers or finders of the loans                                |

#### 4. REAL ESTATE FINANCING

**4.1** Did your Firm perform services in connection with the financing of real estate transactions?

☐ **Yes** ☐ **No** *If no, skip to Section 5.*

**4.2** For which types of real estate financing did your Firm perform services? *Check all that apply.*

- ☐ Loans made by banks, mortgage companies, credit unions, or institutional lenders
- ☐ Seller-financed sale of real estate using note and trust deed
- ☐ Seller-financed sale of real estate on contract
- ☐ Loans made by individual investors or groups of investors
- ☐ Pooled investments by individuals or entities
- ☐ Sale and leaseback transactions
- ☐ Tenant-in-common ("TIC") investments
- ☐ Like-kind exchanges of real estate interests under Section 1031 of the Internal Revenue Code
- ☐ Other real estate financing transactions (*describe*): \_\_\_\_\_

**4.3** Check all that apply for services your Firm performed in connection with the real estate financing transactions identified above? We drafted or prepared:

- |   |  |
|---|--|
| <input type="checkbox"/> Sale Contracts or deeds        | <input type="checkbox"/> Promissory notes, trust deeds, or mortgages       |
| <input type="checkbox"/> Agreements signed by investors | <input type="checkbox"/> Disclosures or risk factors provided to investors |
| <input type="checkbox"/> TIC agreements                 | <input type="checkbox"/> Other services ( <i>describe</i> ): _____         |

**4.4** Check all that apply to your Firm's clients with respect to the real estate financing services referenced above? We represented:

- |   |   |
|---|---|
| <input type="checkbox"/> Developers or sponsors       | <input type="checkbox"/> Promoters, brokers, or finders of investors                        |
| <input type="checkbox"/> Sellers of the real estate   | <input type="checkbox"/> Borrowers or buyers of the real estate                             |
| <input type="checkbox"/> Investors in the real estate | <input type="checkbox"/> Banks, mortgage companies, credit unions, or institutional lenders |

**4.5** Has your firm represented real estate developers? ☐ **Yes** ☐ **No** *If no, skip to Section 5.*

**4.6** What percentage of your Firm's practice involves representing real estate developers? \_\_\_\_\_%

	<b>All or Most of the Time</b>	<b>Some of the Time</b>	<b>None of the Time</b>
A. About how frequently have your real estate developer clients sought or obtained financing or funding from passive investors who were not actively managing the development project?			
B. About how frequently have your real estate developer clients sought or obtained loans from private individuals or non-institutional lenders?			

## **5. FURTHER COMMENTS**

Use this section to provide any desired explanatory comments.

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