

## Businesses need to guard selves from losses

Staff Reports

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Businesses small and large daily walk through legal mine fields, whether it's fighting theft, resisting scams, resolving business disputes or deciding whether to market highly profitable but sketchy or possibly illegal goods.

Henderson County Attorney Steve Gold, whose many duties include prosecuting theft cases and collecting on bad checks for businesses, addressed a number of legal issues during a recent presentation at a Henderson Chamber of Commerce Brown Bag Series luncheon. Among those issues:

**Contracts:** "Always use contracts" when entering business arrangements with another party, Gold advised.

"Always do it in writing," he said. "It's better to spend a little money on the front end than a lot on the back end."

**Bad checks:** They haunt practically every business. But Gold offers many tips for minimizing the risk.

Confirm the identity of the check writer by viewing a picture ID, he advised.

Write — legibly, Gold emphasized — pertinent information such as the check writer's driver's license number, date of birth and Social Security number onto the check. Don't allow the check writer to put their own information on the check.

Whenever possible, avoid accepting non-personalized counter checks.

The signature should be legible and signed in the presence of the individual accepting the check.

If the only address imprinted on the check is a post office box, write the complete street address on the check.

Accept only checks written with the current day's date; don't accept post-dated checks bearing dates later than the current day.

Make sure the written amount of the value of the check corresponds with the numeric amount.

Avoid out-of-state or third-party checks.

Don't accept checks from people who have written you a bad check previously — including if the customer is offering to make good on that bad check with a new one. Insist on cash.

"Don't be afraid to say no," Gold said. "I know it's hard to turn down money, but you're not required to take any check.

"If you have reservations," he said, "call the bank to confirm."

Resolving bad checks: If you do take a bad check, you have several options.

One is to contact the Henderson County Attorney's Bad Check Division. "We have a little over 80-percent collection rate," in part because his office is an arm of law enforcement, Gold said.

The division will collect the face amount on the check plus \$50 for the business (and a \$50 collection fee for the county attorney's office).

"We sent out 2,191 letters last year and collected \$103,170 in face amounts and \$78,000" in \$50 fees for the business for a total recovery of more than \$181,000.

However, the county attorney can pursue a criminal prosecution only on checks written when there is a "contemporaneous exchange of goods and services," a tricky issue requiring that the purchaser receives whatever they are buying at the same time they hand over the check, as opposed to, say, writing a rent check but not getting the key to the premises until the following day,

Another option is to use a private collection agency or check acceptance service. With a check acceptance service such as TeleCheck, "You're guaranteed to lose money with them" — because of their fee of, say, 50 cents per check — "but you're guaranteed to only lose a set amount" on each check.

And a business can file a civil suit against the check writer. A business can pursue a bad debt of less than \$2,500 in small-claims court; debts of less than \$5,000 in district court; and debts of more than \$5,000 in circuit court.

Shoplifting: Theft of merchandise hurts retailers (who suffer lower profits) and consumers (who ultimately must pay higher prices) as well as society at large, Gold said.

Juveniles account for nearly 50 percent of shoplifters — often doing it just for kicks — but there are others: professionals (the most difficult to deter or detect, and who usually target expensive items), the general public (including otherwise solid citizens who may be bored or are trying to stretch their budget), kleptomaniacs (who have a psychological compulsion) and, as some well-publicized cases revealed, even overprivileged starlets.

Gold offered a host of suggestions for minimizing shoplifting,

Use technology, from cameras and detection systems to mirrors.

Greet customers — customers like attention but thieves don't.

Watch for body language such as darting eyes, nervous hands and loitering.

Watch for people carrying large packages, big purses, shopping bags or unusually bulky clothing.

Stay alert; pros often work in pairs, with one providing a distraction while the other one steals.

Don't leave display cases unlocked and show only one item at a time.

Don't allow customers to carry more than one article of clothing into a dressing room at a time.

Avoid narrow aisles and clutter.

Train employees on spotting thieves.

Employee theft: This is surprisingly common, with one in 30 retail employees arrested for workplace theft, though not until after thefts have taken place for an average of two years.

"You're more likely to have money stolen by an employee than someone else," Gold said.

Men account for nearly six out of 10 employee thefts, and steal more on average than women, he said.

To reduce employee theft, create a fair, positive culture for workers. "They're less likely to steal," Gold said.

Theft is more likely "if they feel they're getting back at you," he said.

Implement internal controls, such as separation of duty and having more than one set of eyes on accounts.

Try to hire honest people by using background checks.

Educate and involve employees, including creating an anonymous reporting system.

Perform regular audits at irregular intervals.

Investigate every incident. "Not just big ones," Gold said. "Small ones become big ones."

Some telltale signs of employee theft may be an employee who never takes a vacation (so they always know what's happening in the workplace); prefer to work after hours or take work home; are overly protective of their workspace; exhibit a change in behavior; or when financial records are missing.

Scams: "If you're in small business, you're in the target market for scammers," Gold said.

One example is business identity theft — the cousin to personal ID theft. When a business' identification is stolen, a scam artist may be able to obtain credit cards or a line of credit in the business' name, easily costing it tens of thousands of dollars. Alternatively, a business' consumers may be tricked into making purchases or sending payments to the scam artist.

"It's easy to get information" about a business, Gold acknowledged. Still, he advised business owners to train employees "to verify exactly who they are talking to" when someone tries to obtain confidential information about a business. Better yet, refer such callers or visitors to the business owner.

Another scam is through the use of credit cards. The county advises businesses to practice due diligence, such as recording the three-digit security code on the back of the credit card, the name of the bank issuing the card and its toll-free number.

Still another is the overpayment ruse, in which a customer places an order — by mail, for example — and encloses a check that is made out for more than the price of the merchandise. The business ships the merchandise along with a refund check representing the amount of the overpayment. Then the customer's original check bounces and the business has lost the merchandise plus the amount of the refund check.

"We actually see quite a bit of that," Gold said. Businesses should be careful when receiving a check that overpays for a purchases and when doing business with an unfamiliar customer until the check has cleared the bank.

Then there is valuation fraud, when a business is contacted by someone claiming to be a broker who matches business owners with prospective buyers. The "broker" offers to conduct a valuation of the business for an up-front fee of several thousand dollars; once paid, the "broker" either disappears with the money or mines a business' confidential records for valuable information but never produces a buyer.

If seeking a valuation of your business, "make sure it's by a licensed CPA and a reputable firm," Gold said. "If they ask you to prepay for anything, run."

Other scams include vanity awards, in which a business receives a surprise notice that they have won an award and is invited to buy a plaque, trophy or other merchandise; directory listing fraud, in which a business is contacted and told they have forgotten to pay for an advertisement in some directory; and the advance fee loan scam, in which a cash-strapped business is promised a loan if they will first pay an up-front fee.

Wage garnishment: Employers can be required to withhold a portion of an employee's wages because of a unpaid child support or a judgment by a creditor. Most garnishments are made by court order.

"Some businesses say, 'But we don't do garnishments,'" Gold said. But court-ordered garnishments are binding on the employer under Kentucky state law, he said — and the employer can be held personally liable for any child support garnishment they fail to withhold.

Under the Consumer Credit Protection Act, an employer can't just fire an employee who is subject to garnishment for any one debt (though the act doesn't prohibit firing a worker who has been separately garnished for two or more debts), he said.

The amount of the garnishment can range from 25 percent of an employee's take-home pay for regular debts to 50 to 65 percent for child support.

Synthetic drugs: Gold advised retailers to resist the "seductive profits" from selling psychoactive products such as synthetic marijuana and the deceptively named "bath salts" that both the city and county governments recently outlawed.

"We're already getting reports from the hospital of people in convulsions from this junk," which might be purchased for just a few dollars wholesale but sold retail for \$40 or \$50, he advised.

Both products are commonly sold in small packets resembling a condom package. The synthetic cannabinoids are sold under names such as K2, Spice, Kronic and Puff the Magic Dragon while the "bath salts" are marketed under innocuous names such as Ivory Wave, Bliss and Vanilla Sky as well as MDPV (for methylenedioxypropylone, a common active ingredient).

The products often are labeled as either "legal" or "not for human consumption," and distributors often provide retailers a document claiming they are safe. But Gold noted that many retailers apparently recognize that the products are suspect or illegal because stores frequently hide them behind the counter or in a back room.

Indeed, he said that the Federal Drug Administration last March declared synthetic cannabinoids as a Schedule 1 drug — one with "no health value" — meaning that sales may be prosecuted as a Class A misdemeanor or a federal crime, Gold said.

"Bath salts" produce effects such as three to six hours of extreme euphoria, arousal, energy and sociability that Gold said has been described as a combination of cocaine and meth. But it can be followed by rapid heartbeat, high blood pressure, grinding teeth, overstimulation, severe paranoia, psychotic delusions and — in the long term — breakdown of muscular/skeletal tissue, psychosis, respiratory failure or liver failure.

Trafficking in such controlled substances is a felony under Kentucky state law, he said.

"Just don't sell it," Gold urged. "Don't sell stuff that hurts people."

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