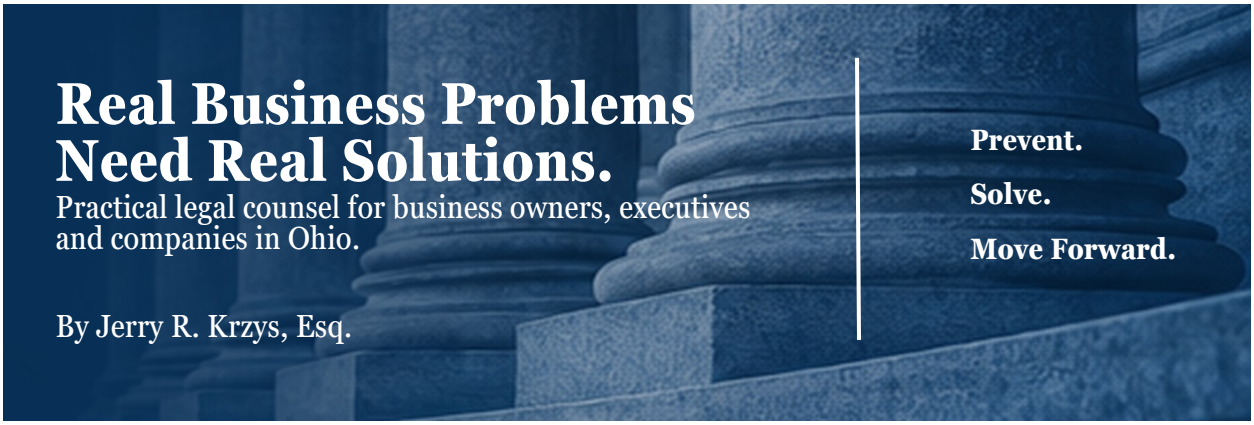
KRZYS LAW, LLC
Business Counsel for Real Problems

Phone: (330) 831-0554
Email: Jerry@BusinessLawOH.com
Website: www.BusinessLawOH.com



The Ohio Business Owner's Legal Problem Checklist: 12 Problems to Address Before They Become Lawsuits

Most business lawsuits do not begin when someone files a complaint at the courthouse. They begin months—and sometimes years—earlier, with an ordinary business problem that still could have been managed.

A customer says, "Go ahead," and work starts before anyone settles the details. A salesperson makes a promise that is not in the contract. A good customer falls behind, but the company keeps extending credit. A complaint sits unanswered because everyone expects it to blow over. A lease renewal date passes unnoticed. Security-camera footage is automatically erased before anyone realizes it may become evidence.

None of these decisions necessarily reflect bad management. Businesses operate under pressure. Customers want answers now. Projects need to move. Longstanding relationships create trust. Employees solve problems in real time. Owners reasonably do not want lawyers involved in every routine transaction.

But some routine business problems have a legal dimension that becomes much more expensive with time. The objective is not to turn every business decision into a legal exercise. It is to recognize the points at which a relatively small amount of attention can preserve options, reduce uncertainty, and keep an ordinary problem from becoming a lawsuit.
Here are twelve of them.

1. You Are Doing Business on Handshake Deals, Quotes, or Purchase Orders That Do Not Say Enough

Suppose a long-time commercial customer calls with a rush order. You send a quote describing the product and price. The customer emails back, "Looks good. Go ahead." You order materials and begin production. There may be nothing wrong with that arrangement. The mistake is assuming that because nobody signed a twenty-page contract, there is no contract or that everyone necessarily agrees upon its terms.

For sales of goods, Ohio law permits a contract to be formed "in any manner sufficient to show agreement," including through the parties' conduct. A contract can exist even when the exact

moment it was formed cannot be identified or some terms remain open. See Ohio Rev. Code § 1302.07(A)-(C).

That means the real problem is often not the absence of a contract. It is uncertainty about *what the contract says*. That uncertainty may not matter until something goes wrong.

Was freight included in the quoted price? When was payment due? What warranty applies? Who bears the cost of a delay? Can the buyer cancel? Can the seller stop performance if invoices are not paid? Who pays for expedited shipping? What happens if the product does not perform as the customer expected?

For manufacturers, distributors, dealers, and other sellers of goods, there is another complication. One company may send a purchase order containing its standard terms. The other responds with an acknowledgment containing different standard terms. Ohio's version of UCC § 2-207 contains specific rules governing those competing forms, including circumstances in which additional terms may become part of an agreement between merchants. The parties' conduct can establish a contract even when their documents do not. *See* Ohio Rev. Code § 1302.10(A)-(C).

The lesson is not that every transaction needs an elaborate contract. It is that the documentation should fit the transaction and answer the questions most likely to matter if things do not go according to plan. For a routine transaction, that may mean a carefully drafted quote, purchase-order acknowledgment, set of standard terms, or email confirmation. For a larger or unusual transaction, more is warranted.

The goal is not paperwork. The goal is certainty.

2. You Sign the Other Side's Contract Without Understanding Where the Risk Went

Businesspeople naturally focus on the terms they can see economically. The price is $85,000. Rent is $12,000 per month. Delivery is due in thirty days. Payment is net-thirty. Those terms matter. But they tell you primarily what the deal looks like if everything goes right. Other provisions determine what happens if it does not.

Ohio courts generally enforce clear contractual language as written. The Supreme Court of Ohio has explained that when contract language is clear, a court looks to the writing itself to determine the parties' intent and does not rewrite a lawful agreement to reflect a different intent. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶¶ 11-12.

That makes provisions sometimes dismissed as "boilerplate" worth understanding before the contract is signed. Consider the questions behind them.

What happens if your $40,000 product allegedly shuts down the customer's production line and the customer claims $500,000 in lost profits?

If someone is injured, whose responsibility is the claim?

If the project runs three months late, what damages can be recovered?

Did you agree to indemnify the other party? If so, for what?

Are damages capped at the contract price—or potentially much higher?

Can either party recover attorneys' fees?

Must a dispute be litigated in Ohio, or did you agree to litigate it three states away?

Ohio law also places particular importance on precise drafting when an indemnity provision purportedly shifts liability for another party's own negligence. And although Ohio generally follows the American Rule under which each side bears its own attorneys' fees, an enforceable contractual fee provision can alter that result.

The practical point is straightforward: The price tells you what the deal costs if everything goes right. **The risk-allocation provisions can determine what it costs if something goes wrong**. That is why a contract review should not simply ask, "Is this a fair price?" It should also ask, "What risks are we agreeing to own?"

3. Your Employees Are Making Commitments Without Clear Authority or Contract Controls

Your written contract may not be the only place where your company's obligations are being created. Consider what happens during an ordinary workday:

A salesperson tells a customer, "Don't worry. We'll take care of that."

An estimator says, "Yes, that's included."

A project manager tells a subcontractor, "Go ahead with the extra work."

An accounts-receivable employee gives a customer another thirty days to pay.

A manager trying to resolve a complaint says, "If it doesn't work, we'll replace it."

Each employee may simply be trying to do his or her job. After a dispute arises, however, those conversations may take on legal significance.

Ohio law distinguishes between actual authority and apparent authority. Actual authority generally concerns authority the principal has given the agent. Apparent authority focuses on manifestations attributable to the principal that reasonably cause a third party to believe the agent has authority. See, e.g., *Willoughby Hills Dev. & Distrib., Inc. v. Testa*, 155 Ohio St.3d 276, 2018-Ohio-4488, ¶¶ 23-27. An internal rule saying "salespeople cannot change warranties" therefore does not necessarily answer every question about what a customer reasonably understood from the company's conduct.

The solution is not to prohibit employees from exercising judgment or to require the owner to approve every decision. It is to **establish defined lanes of authority**.

Who can quote prices?

Approve discounts?

Extend payment terms?

Authorize extra work?

Change scope?

Resolve customer complaints?

Modify warranties?

Sign amendments?

At what dollar amount or level of risk does the decision move up the chain?

Those rules should match the way the company actually operates. A policy that nobody follows is not much of a control. A short, clear authority structure that employees understand can be.

4. You Do Not Have a Reliable System for Documenting Changes to the Deal

The original contract is often not the problem. It's when real life happens. The customer changes specifications. Site conditions differ from expectations. A delivery date moves. Materials become unavailable. Someone approves a substitute. Quantities change. A customer asks for additional work. And someone says: "Just do it. We'll work out the price later." Six months later, everyone remembers that conversation differently.

For transactions involving goods, Ohio's UCC specifically addresses contract modifications and waiver. A modification does not require consideration to be binding, and even an attempted modification that does not satisfy an applicable contractual requirement can, in appropriate circumstances, operate as a waiver. See Ohio Rev. Code § 1302.12(A), (B), (D). Ohio courts have likewise recognized that post-contract words and conduct can matter notwithstanding written-modification provisions. *See Fields Excavating, Inc. v. McWane, Inc.*, 2009-Ohio-5925, ¶¶ 30-41.

The practical problem extends well beyond the UCC. Texts, emails, revised drawings, field directives, substituted materials, schedule changes, partial approvals, and repeated departures from the written procedure all create a factual record. By the time a dispute occurs, the original agreement may no longer tell the whole story.

That is why a good change-order process is not paperwork for paperwork's sake. **It is a system for making sure both sides remember the same deal six months later**. The process also needs to be usable. A three-page form requiring four signatures is not an effective control if everyone in the field routinely bypasses it. For some businesses, a standardized email identifying the requested change, price effect, schedule effect, and person authorizing it may be far more effective.

The best procedure is usually the one employees will actually follow.

5. You Keep Doing Work for Customers Who Are Falling Further Behind on Payment

This problem rarely starts with a customer announcing, "We are not going to pay you."
It develops gradually. An invoice reaches thirty days past due. Then sixty. The customer explains that a payment is coming Friday. Friday passes. Meanwhile, the customer places another order.

You fill it because this has historically been a good account, because stopping work may damage the relationship, and because continuing the relationship somehow makes payment on the old invoices feel more likely. A $12,000 problem becomes a $40,000 problem.

The psychology is understandable. Businesses are reluctant to jeopardize valuable relationships, and, once substantial money is already outstanding, there is a natural tendency to keep working in the hope that the account will become current. But each new extension of credit increases the amount at risk.

Ohio law may provide various tools depending on the transaction: contractual interest, guaranties, security interests, suspension or termination rights, deposits, COD requirements, and, in appropriate construction transactions, mechanics' lien rights. Statutory interest may also apply to certain unpaid obligations. See Ohio Rev. Code § 1343.03(A). Mechanics' lien rights under Ohio Rev. Code Chapter 1311 are particularly sensitive to statutory notices and deadlines.

But legal remedies are not a substitute for credit discipline. A business should **decide before** a valuable customer becomes delinquent what happens at 30, 60, and 90 days. When does the account go on credit hold? When is a deposit required? Who can approve additional work? At what dollar amount does management become involved? When should counsel review the situation?

A credit policy matters most when the customer is someone you want to keep. Predetermined escalation points allow the company to make those decisions deliberately rather than emotionally.

6. You Have a Customer Complaint That Everyone Hopes Will Simply Go Away

People avoid unpleasant things. Organizations do too. A customer complains. Sales thinks operations should handle it. Operations believes the customer is unreasonable. Management does not want to make the situation bigger than it is. Someone intends to call the customer back. Nobody does. Two weeks later, a certified letter arrives.

The first complaint is often the point at which a business has the *greatest number of options and the lowest cost of solving the problem*. Responding intelligently does not mean admitting liability. It does not mean automatically issuing a refund. And it certainly does not mean allowing whichever employee happens to answer the phone to make commitments on the company's behalf.

It means finding out what happened. What does the contract say? Who dealt with the customer? What was promised? Are photographs, video, emails, texts, inspection records, or damaged components relevant? Is there an insurance-notice issue? Does a warranty apply? Is this a consumer transaction? Is the complaint isolated, or does it identify a recurring operational problem?

For consumer transactions, complaint handling deserves additional care because Ohio's Consumer Sales Practices Act can reach unfair or deceptive conduct occurring before, during, *or after* the underlying transaction. See Ohio Rev. Code § 1345.02(A)-(B).

A business therefore benefits from knowing who owns a significant complaint, who investigates it, who communicates with the customer, who can authorize a repair, refund, or credit, and what events trigger insurance or legal review. The objective is not defensiveness. It is to **respond while the business still has choices**.

7. Your Consumer-Facing or Home-Service Business Has Never Audited Its Sales Process

Many business owners hear "consumer protection law" and translate it into one basic rule: Don't cheat customers. That is obviously good advice. It is also incomplete.

Ohio businesses dealing with consumers can encounter legal requirements affecting how transactions are advertised, represented, documented, performed, modified, and cancelled. A legitimate business can create unnecessary legal exposure without intending to deceive anyone simply because its forms or procedures do not match the law governing a particular transaction.

Ohio's Consumer Sales Practices Act prohibits unfair, deceptive and unconscionable acts or practices in connection with consumer transactions. See Ohio Rev. Code §§ 1345.02(A)-(B), 1345.03(A)-(B). Depending on the circumstances, statutory remedies can include rescission, damages, and, for qualifying violations, enhanced damages and attorneys' fees. See Ohio Rev. Code § 1345.09(A)-(B), (F)(2).

Ohio also has more specific statutory regimes. The Home Solicitation Sales Act applies to qualifying transactions negotiated or agreed upon away from the seller's place of business, subject to statutory definitions and exclusions. For covered sales, Ohio Rev. Code § 1345.23(A)-(D) imposes specific written agreement and cancellation requirements. One particularly important feature is that the statutory cancellation period does not begin to run until the seller has complied with the applicable writing and notice requirements. Ohio administrative regulations also regulate certain direct solicitations. See Ohio Adm. Code 109:4-3-11(A)-(C).

Home construction presents another layer. Ohio Rev. Code Chapter 4722 separately regulates defined home construction service contracts exceeding $25,000. Among other things, Section 4722.02 requires a written contract before covered work begins and specifies information the contract must contain, while Section 4722.03 prohibits specified practices.

These laws are not interchangeable, and not every residential transaction is governed in the same way. The CSPA, Home Solicitation Sales Act, and Revised Code Chapter 4722 have different definitions, requirements, exclusions, and remedies.

That is precisely why the right question is broader than: "Is our contract okay?" The better question is: **Does our sales process comply with the law from the customer's first contact through final payment?**

Think about the transaction chronologically: Advertising. Initial contact. Estimate. Sales representations. Place of contracting. Contract documents. Deposit. Cancellation rights. Change orders. Performance. Warranty. Complaint handling. That is how the customer experiences the transaction. It is also where legal risk actually develops.

8. You Ignore Default and Notice Provisions Until You Need to Enforce the Contract

The other party breaches. Management has had enough. "Terminate them." Then someone finally reads the contract carefully. The agreement requires written notice to a specified address, delivered by a specified method. The other party then has ten days to cure. Only after that period expires does the termination right arise. Nobody sent the notice. The business may be completely justified in its frustration and still have failed to take the contractual step necessary to exercise the remedy it wants.

Ohio courts generally enforce clear contractual language as written. *See* *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶¶ 11-12. The effect of failing to comply with a particular notice provision depends on the language of the agreement and the circumstances. Issues can include conditions precedent, cure rights, substantial compliance, waiver, and estoppel.

So the point is not that every technical notice error automatically destroys a claim.
It is this: *A contract does not merely tell you what the other side promised. It may tell you exactly what you must do when that promise is broken.*

Before terminating a contract, stopping performance, declaring a default, exercising a remedy, or escalating a dispute, **identify the procedural requirements**. Where must notice be sent? By what method? Who must receive a copy? Is there a cure period? Does another notice follow? Are there contractual time limits?

Those questions are much easier to answer before action is taken than after someone argues that the action itself breached the agreement.

9. You Treat Your Real Estate Documents as Filing-Cabinet Documents

A shopping-center owner negotiates a lease with a new tenant without checking whether an old declaration restricts the proposed use. A landlord tolerates a tenant default for months without reviewing the lease's notice and cure provisions. A developer begins planning an outparcel only to discover that an existing easement affects access or that a recorded agreement restricts what can be built. A tenant assumes there will be time later to deal with an approaching renewal option. The immediate problem may look new. The document controlling it may have been signed twenty years ago.

Commercial real estate is particularly susceptible to this problem because the rights governing a property are rarely contained in a single document. Depending on the property, the relevant documents may include leases and amendments, deeds, easements, declarations, reciprocal easement or operating agreements, development agreements, access agreements, restrictive covenants, guaranties, assignments, subordination agreements, and other recorded or unrecorded agreements.

Those documents do more than describe rights that existed when the transaction closed. They can continue to regulate how the property is operated, leased, developed, financed, modified, and eventually sold.

For landlords, that can mean rent adjustments, operating-expense reconciliations, insurance requirements, maintenance and repair obligations, tenant defaults, notice and cure procedures, assignment restrictions, guaranties, use restrictions, exclusives, renewal options, purchase rights, signage, parking, and consent requirements.

For developers and property owners, the issues can extend beyond the lease. Easements may determine where vehicles or utilities can go. Declarations and reciprocal easement agreements may regulate access, parking, construction, maintenance costs, signage, prohibited uses, approval rights, or future development. A right that looks straightforward on a site plan may be materially affected by documents recorded years earlier.

Ohio law itself reflects the continuing significance of these documents. For example, Ohio permits a memorandum of lease to be recorded and provides that the recorded memorandum constitutes constructive notice of the information it contains. See Ohio Rev. Code § 5301.251. Ohio law also expressly addresses recorded grants, reservations, and agreements creating easements. See Ohio Rev. Code § 5301.011.

Deadlines buried in real estate documents can be particularly unforgiving. The Supreme Court of Ohio recently provided a useful illustration in Ashland Global Holdings, Inc. v. SuperAsh Remainderman, Ltd. Partnership, 181 Ohio St.3d 36, 2025-Ohio-2835, ¶¶ 15-23. The case involved a lessee that failed to timely exercise renewal options under 24 leases. The Court reiterated that when an option contains a time limit, the option ordinarily may not be exercised after that time has passed. Although equitable relief can be available in some contractual circumstances, the Court held that the lessee's negligent failure to timely exercise the renewal options did not warrant it.

That is an expensive way to discover that real estate document administration matters. The solution is not to periodically reread every document in the property file. It is to identify the provisions that affect how the property is actually operated and turn them into management tools. Abstract significant leases and other governing agreements. Calendar renewal, purchase-option,

notice, termination, and other critical dates well in advance. Track insurance certificates, CAM reconciliations, and audit rights. Know who is responsible for maintenance and capital repairs. Identify use restrictions, exclusives, access and parking rights, signage requirements, approval rights, and assignment restrictions. Before developing or materially changing a property, determine whether existing easements, declarations, or other agreements affect what you intend to do.

The closing binder should not be the last time the documents governing a property are carefully reviewed. A valuable real estate right can be lost or an avoidable problem created simply because nobody was watching the provision that controlled what happened next.

10. Your Contractual Risk and Insurance Coverage Have Never Been Compared

Contracts and insurance are often handled by different people. Operations negotiates the contract. The insurance broker renews the policies. Accounting receives the certificates. Nobody puts the contract and insurance program next to each other. That can create a dangerous assumption: "Our insurance will cover it." Maybe.

A contract may require your business to indemnify another party, defend certain claims, maintain specified insurance, add another entity as an additional insured, waive subrogation rights, or assume other obligations.

Those concepts are related to insurance coverage, but they are not the same thing. An indemnity obligation is a contractual obligation. An additional-insured requirement is another contractual obligation. The actual coverage available under an insurance policy depends on the policy language, endorsements, exclusions, nature of the claim, and other circumstances. A contract can therefore impose a risk that the insurance program does not fully fund. The reverse problem is also possible: management may spend money buying insurance without understanding how it relates to the risks the company routinely assumes by contract.

This is not an argument that business owners should interpret insurance policies themselves. It is an argument for connecting functions that too often operate separately. **Periodically compare the risks the company is agreeing to assume with the insurance program it expects to respond**. For significant or unusual risk transfers, that may require coordination among management, business counsel, the company's insurance professional, and, where appropriate, coverage counsel.

The key is to make that comparison before the loss.

11. You Have No Evidence-Preservation Process When Trouble Starts

Suppose a customer claims she fell in your parking lot. A security camera recorded the area. Nothing happens immediately, so nobody thinks much about the recording. Thirty days later, the system automatically overwrites it. Then the lawyer's letter arrives. Or the relevant communications are text messages on an employee's personal phone, and the employee replaces it. Or a failed component is thrown away after a replacement is installed. Or somebody cleans out the project file because the job is finished. *Evidence can disappear through completely ordinary business practices*.

Ohio recognizes a cause of action for intentional interference with or destruction of evidence. The Supreme Court of Ohio identified five elements in *Smith v. Howard Johnson Co.*, 67 Ohio St.3d 28, 615 N.E.2d 1037 (1993), ¶ 2, including pending or probable litigation, knowledge that

litigation exists or is probable, willful destruction designed to disrupt the case, actual disruption, and damages.

That is a demanding standard. Every misplaced document or overwritten video is not automatically "spoliation." But that should not obscure the practical lesson. When a significant dispute, accident, threatened claim, demand letter, product failure, employment dispute, governmental inquiry, or similar event occurs, someone should ask promptly: **What information might matter later, and what will happen to it if we do nothing?** The answer may include contracts, emails, text messages, photographs, surveillance footage, invoices, delivery records, inspection reports, drawings, employee notes, physical components, or electronically stored information.

The preservation response should fit the problem. A modest commercial dispute does not necessarily require a company-wide preservation exercise. But someone needs to recognize the trigger. Once evidence is gone, no lawyer can recreate it.

12. You Wait Until Someone Threatens to Sue Before Calling Business Counsel

This final problem needs an important qualification. The goal is *not* to call a lawyer every time something goes wrong. Businesses need to operate. Managers need discretion. Owners should be able to solve routine problems without converting every decision into a legal project.

The more useful skill is recognizing the relatively small number of situations in which waiting materially reduces the company's options. Consider the pattern running through the first eleven problems.

You cannot negotiate a limitation of liability after the contract has been signed and the loss has occurred.

You cannot document a change cleanly six months after everyone has developed a different memory of the conversation.

You cannot impose a credit limit retroactively after the receivable has tripled.

You cannot send timely contractual notice after the deadline has expired.

You cannot exercise a lease option on time after the option period has passed.

You cannot make overwritten surveillance video reappear.

And you cannot unsend the email an employee wrote while angry.

Legal advice is often most valuable while the business still has choices. That does not mean bringing counsel into every transaction. **It means identifying trigger events**: an unfamiliar contract with significant risk allocation, a large unpaid balance that keeps growing, a recurring customer complaint, a consumer transaction with statutory requirements, a material default, a significant real-estate deadline or development decision, a threatened claim, or an event that may require evidence preservation. At those moments, a short conversation may accomplish more than extensive legal work months later.

The Common Thread

The twelve problems above look different, but they share a common feature. They usually begin while the business still has room to maneuver. Terms can still be clarified. Authority can still be defined. Changes can still be documented. Credit can still be limited. A complaint can still be investigated. Forms can still be corrected. Notice can still be sent. Deadlines can still be calendared. Insurance can still be compared to contractual obligations. Evidence can still be preserved.

Over time, those options disappear. That is why good legal risk management is not primarily about anticipating every possible lawsuit. No business can do that. It is about building a few practical systems that identify problems early enough to do something useful about them.

Most business lawsuits begin as ordinary business problems. The best time to address them is while they are still ordinary business problems.

This article is for general informational purposes only and does not constitute legal advice. The application of Ohio law depends on the particular facts, contractual language, law, and circumstances of each matter.