



GOING SOLO

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1 ☐ **DISCLAIMER**

I Am Not Your Attorney.

This seminar is not intended to provide you with legal advice. Seek legal advice from an attorney who is familiar with your particular situation and the facts in your particular case. The example contract clauses contained herein (if any) are intended as examples only and should be reviewed and modified by competent legal counsel to reflect variations in applicable state and local law specific to your circumstances.

2 ☐ **Going Solo 10 Commandments**

1. Know the Law that Governs your Practice

"Ignorance of the law is no excuse." The professional service provider is governed by the law in all areas of his or her practice.

3 ☐ **Going Solo 10 Commandments**

"Everyone is presumed to know the law, and the surveyor is no exception. This is an irrebuttable presumption that may not be overcome by contrary evidence. ... Understanding and applying the correct law (including the laws of evidence) are unquestionably part of the surveyor's duties."

Robillard, Walter G., Donald Wilson, Curtis M. Brown, *Evidence and Procedures for Boundary Location, Fifth Edition*, at 38-39.

4 ☐ **Going Solo 10 Commandments**

Areas of the Law that Concern Us

- Case Law
- Statutes and Codes
- Contract Law
- Professional Liability and Limitations on Liability
- Tort Law
- Rules of Evidence and Civil Procedure
- Property Rights and Remedies
- Alternative Dispute Resolution

5 ☐ **Going Solo 10 Commandments**

If You are Going to Focus on Property Surveys:

- Property Law, Including:
 - Boundary Law
 - Easement & Rights-of-Way
 - Deeds and Conveyances
 - Legal Descriptions
 - Real Property Title and Recording Statutes
 - Property Rights and Remedies
 - Water Boundary Law

6 ☐ **Going Solo 10 Commandments**

Property Surveyors:

"Everyone is presumed to know the law, and the surveyor is no exception. This is an irrebuttable presumption that may not be overcome by contrary evidence. ... Understanding and applying the correct law (including the laws of evidence) are unquestionably part of the surveyor's duties."

Robillard, Walter G., Donald Wilson, Curtis M. Brown, *Evidence and Procedures for Boundary Location*, Fifth Edition, 2006.

7 ☐ **Going Solo 10 Commandments**

Property Surveyors:

- Knowing, understanding and applying the law is a function property boundary surveying. Being able to conduct legal research is absolutely essential to being a successful land surveyor.

8 ☐ **Going Solo 10 Commandments**

2. Good Ethics is Essential to a Successful Solo Practice

"It takes a lifetime to build a good reputation, but you can lose it in a minute."

Will Rogers

9 ☐ **Going Solo 10 Commandments**

"I'm a very open minded person, except when it comes to other people and new ideas."

Credited to Will Rogers

10 ☐ **Going Solo 10 Commandments**

"Without superior knowledge, we have an inferior profession. ... One of the reasons for giving surveyors the exclusive privilege of marking boundaries is to prevent the unskilled from monumenting lines that encroach on the bona fide rights of others."

Brown, Curtis M., *The Professional Status of Land Surveyors*, 1961, "Surveying and Mapping," Vol. XXI, No. 1, at 63-71.

11 ☐ **Going Solo 10 Commandments**

"The major deterrent to our becoming a learned profession is our low requirements for the right to practice. So long as we have low admission requirements, we will have low standards of practice and low public opinion."

Brown, Curtis M., *The Professional Status of Land Surveyors*, 1961, "Surveying and Mapping," Vol. XXI, No. 1, at 63-71.

12 ☐ **Going Solo 10 Commandments**

"Differences between surveyors are a cause of degradation. We prove by our own survey monuments that we are incompetent, since we cannot all arrive at the same location using the same deed."

Brown, Curtis M., *The Professional Status of Land Surveyors*, 1961, "Surveying and Mapping," Vol. XXI, No. 1, at 63-71.

13 ☐ **Going Solo 10 Commandments**

"Professional stature is not gained by self proclamation. Professional stature must be earned and can only be measured by what others think of us. ... If you want to be a professional man, earn that right."

Brown, Curtis M., The Professional Status of Land Surveyors, 1961, "Surveying and Mapping," Vol. XXI, No. 1, at 63-71.

14 ☐ **Going Solo 10 Commandments**

"Ethics are often unenforceable. True professional stature arises from obedience to the unenforceable."

Brown, Curtis M., The Professional Status of Land Surveyors, 1961, "Surveying and Mapping," Vol. XXI, No. 1, at 63-71.

15 ☐ **Sources of Ethical Behavior**

- What are the sources of ethical behavior?
-

16 ☐ **Going Solo 10 Commandments**

3. Just Showing Up Doesn't Cut It

- If you don't do it, it don't get done.
- PR, Client Development and Maintenance
- Equipment Acquisition and Maintenance
- Personnel/Helpers
- Finances
- Time Management
- Professional Practice
-

17 ☐ **STEELE v. CALLAHAN**

Indiana Court of Appeals
970 N.E.2d 799
July 17, 2012

18 ☐ **Going Solo 10 Commandments**

4. Mistakes Will Be Made, It's How You Deal With Them That Counts

"Good judgment comes from experience, and a lot of that comes from bad judgment."

Will Rogers

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19 ☐ **GRAVES v. DOWNEY**

Supreme Judicial Court of Maine
885 A.2d 779
November 22, 2005

20 ☐ **Going Solo 10 Commandments**

Paul Harvey Rest-of-the-Story:

- From Board records, it appears that S.E. Downey is now deceased and the company is no longer in existence. Unfortunately, his son Patrick appears to now be licensed and practicing. Perhaps he learned some valuable lessons in this case.

21 ☐ **Going Solo 10 Commandments**

No Good Deed Goes Unpunished:

22 ☐ **KHLH, Inc. v. WISCONSIN SURVEYORS, Inc.**

Wisconsin Court of Appeals

619 N.W.2d 307

September 19, 2000

23 ☐ **Going Solo 10 Commandments**

5. You Need a Business Plan

- Practice Blueprint (where do you want to go and how do you get there)
- Finances
- Marketing
- Office Location
- Field and Office Equipment
- Personnel/Helpers
- Insurance
-
-

24 ☐ **Going Solo 10 Commandments**

"Even though you are on the right track - you will get run over if you just sit there."

Will Rogers

25 ☐ **The Business Plan**

Plans Are Not One-Size Fits All

- A Plan for Seeking Financing
- A Plan to Guide the Business
- Personal Style and Ability of the Solo
- Complexity of the Business
- Strength of Competition
- Level of Uncertainty
-

26 ☐ **The Business Plan**

Planning Pitfall

No Real Goals:

- Goals are vague and general
- Goals not specific or measurable
- Activity oriented not goal-oriented
-

27 ☐ **The Business Plan**

Planning Cure

No Real Goals:

- Set specific measurable goals
- Set actions steps
- Keep overall aim in mind

28 ☐ **The Business Plan**

Planning Pitfall

Failure to Anticipate Obstacles:

- Excessive optimism
- No alternative strategy
- Underestimation of competition, needed capital, conflicts, etc.
-

29 ☐ **The Business Plan**

Planning Cure

Failure to Anticipate Obstacles:

- Brainstorming with others
- Maintain flexibility
- Anticipate as many obstacles as possible and how to overcome them
-

30 ☐ **The Business Plan**

Planning Pitfall

Lack of Commitment:

- Procrastination
- Lack of Priorities
- Focus on routines and daily activities
-
-

31 ☐ **The Business Plan**

Planning Cure

Lack of Commitment:

- "Just do it!"

- Prioritize and set milestones
- Ask each day: "What did I accomplish today toward my goals?"
-
-

32 ☐ **The Business Plan**

Planning Pitfall

Failure to Learn from Experience:

- Lost sight of goals
- Mistakes repeated
- Same s**t different day
-
-

33 ☐ **The Business Plan**

Planning Cure

Failure to Learn from Experience:

- Concentrate on producing results
- Be adaptive and flexible
- Look for new and better ways of accomplishing tasks
-
-

34 ☐ **The Business Plan**

Initial Considerations

- Newly Licensed or Seasoned Professional
- No Clients or Existing Clients
- Need Financial Assistance or Self-Funded
- No Equipment or Existing Equipment
- Completely Solo or with Help
- Technology and Equipment needs, to go Solo
-
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35 ☐ **The Business Plan**

Business Form

Sole Proprietor (D.B.A.)

- Most Common and Easiest to Form
- No Protection of Personal Assets
- Pass Through Taxation
- Your Social Security Number Used
-

36 ☐ **The Business Plan**

Business Form

Limited Liability Company (L.L.C.)

- Easy to Form
- Some Protection of Personal Assets
- Pass Through Taxation
- Employer Identification Number Used
-

37 ☐ **The Business Plan**

Business Form

Subchapter "S" Corporation

- Requires Incorporation
- More Complex to Operate and Maintain
- Separate Entity under the Law
- Pass Through Taxation
- Employer Identification Number Used
-

38 ☐ **The Business Plan**

Business Form

Professional Corporation

- Requires Incorporation
- More Complex to Operate and Maintain
- Separate Entity under the Law & IRS Rules
- Double Taxation/Lower Rates
- Employer Identification Number Used
-

39 ☐ **The Business Plan**

Goal Setting

"It is through effective goal planning that action steps are derived. Goals are not dreams, fantasies or the product of wishful thinking; nor are they mere predictions or guesses about future outcomes. ... Goal setting is not a task but a process, a way of dealing with the world that is repeated over and over as conditions change.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

40 ☐ **The Business Plan**

Planning Ingredients

Establishment of Goals that are:

- Specific and Concrete

- Measurable and Related to Time
- Realistic and Attainable
- Capable of Being Modified and Adapted

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

41 ☐ **The Business Plan**

Planning Ingredients

- Establishment of priorities and identification of conflicts and how to resolve them.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

42 ☐ **The Business Plan**

Planning Ingredients

- Identification of problems and obstacles.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

43 ☐ **The Business Plan**

Planning Ingredients

- Specification of necessary tasks and action steps.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

44 ☐ **The Business Plan**

Planning Ingredients

- Indication of how results will be measured.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

45 ☐ **The Business Plan**

Planning Ingredients

- Establishment of progress milestones, especially revenue, expenses and cash targets, deadlines and dates.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

46 ☐ **The Business Plan**

Planning Ingredients

- Identification of risks involved and alternatives for coping with possible contingencies.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

47 ☐ **The Business Plan**

Planning Ingredients

- Identification of outside help and resources that need to be marshaled and controlled.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

48 ☐ **The Business Plan**

Planning Ingredients

- Periodic review of progress and revision of goals as factors such as changing competitive situation require.

Livingstone, John L., *The Portable MBA in Finance and Accounting*, Wiley & Sons, Inc. 1992.

49 ☐ **The Business Plan**

The Plan Itself

- For most solo's, the Business Plan is a plan of action and a guide for operating the business as a solo.

50 ☐ **The Business Plan**

A Written Plan Overview

"Without a strategy, a manager has no thought-out course to follow, no roadmap to manage by, no unified action program to produce the intended result."

Thompson, Arthur A. and A.J. Strickland, *Strategic Management*, 8th Edition, Irwin, Inc. 1995.

51 ☐ **The Business Plan**

A Written Plan Overview

- Why You are Doing What You are Doing?
- A Big-Picture Statement.
- Baseline for Where You Started.
- One Page at the Most.
- Focus on the Forest not the Trees.

52 ☐ **The Business Plan**

The Budget

- There are many parts to a formal business plan and the arrangement of those parts does not usually start with the budget, however, for the land surveyor considering going solo, this is perhaps the most important aspect of the plan.

53 ☐ **The Business Plan**

The Budget

- Revenue is generally considered first in most plans followed by operating expenses. However, for the practitioner considering going solo, how much it's going to cost with an idea of how much revenue you can generate is perhaps a better approach.

54 ☐ **The Business Plan**

Start-Up Costs

Field Equipment Costs:

Vehicle	\$50,000
Robotic Total Station	\$20,000
RTK Rover Unit	\$30,000
Misc. Equip. & Supplies	<u>\$20,000</u>
Total	\$120,000

55 ☐ **The Business Plan**

Start-Up Costs

Office Equipment Costs:

Furniture	\$10,000
Computers , Tele., etc.	\$10,000
Software	\$ 5,000
Misc. Equip. & Supplies	<u>\$ 5,000</u>
Total	\$30,000

56 ☐ **The Business Plan**

Start-Up Costs

Total Field Equipment	\$120,000
Total Office Equipment	<u>\$ 30,000</u>
Total	\$150,000
Financed @ 5% for 5 Years	\$2,625/Mo.

57 ☐ **The Business Plan**

Monthly Operating Costs

Overhead and Expenses:

Office Rental w/Utilities	\$1,500
Insurance (Bus. & Health)	\$2,000
Vehicles (Gas & Maint.)	\$1,000

Licenses, Fees & Training	\$ 200
Loan Payments	<u>\$2,625</u>
Total	\$7,325

58 ☐ **The Business Plan**

Monthly Operating Costs	
Overhead and Expenses	\$7,325
Desired Income (\$100,000/yr.)	\$8,333
Estimated Tax Payments	<u>\$2,900</u>
Total	\$18,558
Hourly Rate (40 hr./wk.)	\$110

59 ☐ **The Business Plan**

Operating Costs Overview	
Monthly Costs	\$ 18,558
Yearly Costs	\$223,000
Hourly Rate (40 hr./wk.)	\$ 110
Need to Bill per Week	<u>\$ 4,400</u>

60 ☐ **The Business Plan**

- Operating Costs Overview
- So far, your hourly rate also assumes hitting the ground running with clients ready to provide you with \$4,400 per week in revenue. The more likely scenario is that you may need six months to a year to get up to this level.

61 ☐ **The Business Plan**

Yearly Operating Costs	
Yearly Costs	\$223,000
No Clients (6 Months)	<u>\$111,500</u>
Total	\$334,500
Hourly Rate (40 hr./wk.)	\$160.81
Say Hourly Rate of ...	<u>\$165.00</u>
<u>Now you need to bill \$6,600 per Week</u>	

62 ☐ **The Business Plan**

- Marketing Plan
- Unless you already have existing clients, some form of marketing will need to take place in order to get clients.

63 ☐ **The Business Plan**

- Marketing Plan
- Potential Market/Target Clients
 - Advertising (currently not in budget)

- Word of Mouth (very slow but good)
- Internet Presence (also not in budget)
- Social Networks (outside of 40-hour week)
- Referrals
- Overflow/Work Sharing vis-à-vis Colleagues

64 ☐ **The Business Plan**

Home Office or Outside Office

- Costs, Often a Prime Motivator
- Isolation vs. Inclusion and Synergy
- Flexibility vs. Lease and Commitment
- Who Minds the Store When You are Away?
- Will Clients be Making Office Visits?
- Home Office Now/Move Out Later?
-

65 ☐ **Going Solo 10 Commandments**

6. Operate Behind a Corporate Shield

- Sole Proprietor (D.B.A.)
- Limited Liability Company (L.L.C.)
- Subchapter "S" Corporation (Inc.)
- Professional Corporation (Inc.)

66 ☐ **The Limited Liability Company**

- The easiest form of business to work with and operate. It's a formal step above the Sole Proprietor (D.B.A.) and not as complex as a Corporation.

67 ☐ **The Limited Liability Company**

Some of the Advantages

- Protection of Personal Assets
- No Employees
- No Matching FICA (Fed.Ins.Contrib.Act)
- No Unemployment Taxes
- Single Taxation on Income
- Employer Identification Number (EIN)
-

68 ☐ **The Limited Liability Company**

Some of the Disadvantages

- It's a Fictitious Name and May Require Additional Professional License(s)
- May also Require Out-of-State Filings
- Mixing and Mingling Personal and Company Assets
- No Matching Contributions to FICA

- No Unemployment Benefits
-

69 ☐ **The Limited Liability Company**

What's Generally Required

- In Many Cases You can Buy a Kit
- Articles of Organization Filed with State
- Operating Agreement or By-Laws
- Annual Report with the State
- Annual Fee
-

70 ☐ **Going Solo 10 Commandments**

7. Nobody's Watching Your Back

- Insurance is a Must (Life, Health and Disability)
- Support Systems (Spouse, Helpers, Illegal Aliens)
- Safety Plans (Communication a Key)
- Liability (Cost-Risk Analysis)
- Experts on Your Side (Attorney, Accountant, other Consultants)

71 ☐ **Support Systems**

Who's Watching Your Back

- Spouse or Significant Other
- Helpers and Assistants
- Colleagues
- The Lone Cowboy? (even the Lone Ranger had Tonto!)

72 ☐ **Support Systems**

Hiring Helpers

- No-Pay Helpers (Spouse or Significant Other)
- Form W-2 Employees
- Form 1099-MISC Employees
- Temp. Staff/Temp. Agencies
- Using the Employees of Others
- Illegal Aliens
-

73 ☐ **Support Systems**

The Form W-2 is used by employers to:

- Report wages, tips and other compensation paid to an employee.
- To report the employee's income tax and Social Security taxes withheld and any advanced earned income credit payments.
- To report wage information to the employee, and the Social Security Administration.

The Social Security Administration shares the information with the Internal Revenue Service.

-

74 **Support Systems**

A Form 1099-MISC is:

- Generally, used to report payments made in the course of a trade or business to a person who is not an employee or to an unincorporated business.
- Required among other things, when payments of \$10 or more in gross royalties or \$600 or more in rents or compensation are paid.
- Provided by the payer to the IRS and the person or business that received the payment.
-

75 **Support Systems**

IRS Definition of Employee

"The determination [of employment status] is complex, but is based on whether the person for whom the services are performed has the right to control how the person performs the services. It is not based merely on how the person is paid, how often the person is paid, or whether the person works part-time or full-time." [Emphasis added.]

Source: IRS Website

76 **Support Systems**

IRS Definition of Employee

There are three basic categories of factors that are relevant to determining worker classifications:

- Behavioral control
- Financial control and
- Relationship of the parties

Source: IRS Website

77 **Support Systems**

Independent Contractor

"The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the *right to control only the results of the work and not the means and methods of accomplishing the results*." [Emphasis provided.]

Source: IRS Website

78 **Support Systems**

Common-Law Employee

"Under common-law rules, anyone who performs services for you is your employee *if*

you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.” [Emphasis provided.]

Source: IRS Website

79 ☐ **Support Systems**

IRS Determination of Status

“If you would like the IRS to determine whether services are performed as an employee or independent contractor, you may submit [Form SS-8](#) (PDF), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.”

Source: IRS Website

80 ☐ **Support Systems**

IRS Determination of Status

“Be aware that it can take at least six months to get a determination, but a business that continually hires the same type of workers to perform particular services may want to consider filing the Form SS-8.”

Source: IRS Website

81 ☐ **Support Systems**

Consequences of Treating an Employee as an Independent Contractor

“If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker.”

Source: IRS Website

82 ☐ **Support Systems**

IRS Small Business Workshops

“The Virtual Small Business Tax Workshop is composed of nine interactive lessons designed to help small business owners learn their tax rights and responsibilities.”

www.irsvideos.gov/virtualworkshop/

Source: IRS Website

83 ☐ **Going Solo 10 Commandments**

8. Decide the Type of Practice You Want to Have

- Evaluate Your Strengths and Weaknesses
- Specialty or Niche
- Technical Knowledge
- Legal Knowledge

- Professional Service or Commodity
-

84 ☐ **Kendall v. Lowther**

Supreme Court of Iowa
356 N.W.2d 181
September 19, 1984

85 ☐ **LAWLER v. HARE**

Alabama Court of Civil Appeals
587 So.2d 387
August 9, 1991

86 ☐ **Lawler v. Hare**

"In this case, the trial court determined that Lawler failed to provide the appropriate direction and supervision for Mr. Baker. Mr. Baker testified that he and his crew did the survey and plat for the Hares. Lawler testified that he never visited the property and was not even in Alabama when the survey was completed."
Lawler v. Hare, 587 So.2d 387 (Ala.App.1991).

87 ☐ **Lawler v. Hare**

"Additionally, I observe that out of a simple fee dispute case, the trial court's judgment, if it stands, may very well establish a new standard that could stifle a professional's effective use of auxiliary personnel. Indeed, as the same pertains to licensed land surveyors, it appears to suggest that the licensee be on one end of the chain."
Lawler v. Hare, 587 So.2d 387 (Ala.App.1991).

88 ☐ **Going Solo 10 Commandments**

9. Time is Money
 - Scheduling and Priorities
 - Time Keeping
 - Invoicing
 - Avoid Distractions
 - E-Mail and Social Networks

89 ☐ **BULL v. PINKHAM**

Vermont Supreme Court
752 A.2d 26
April 21, 2000

90 ☐ **Bull v. Pinkham**

"There is a substantial body of case law which holds that where the wrongful act of one person has involved another in litigation with a third person or has made it necessary for that other person to incur expenses to protect his interests, litigation

expenses, including attorney's fees, are recoverable."
Bull v. Pinkham, 752 A.2d 26 (Vermt.2000).

91 ☐ **Going Solo 10 Commandments**

10. Be Careful That You Don't Become Isolated

- The Home Office
- Sharing Office Space
- Professional Communities
- Social Communities
- It's Too Easy to Work 24-7-365—Seven Days a Week
-

92 ☐ **Is The Solo Life Right For You?**

Checklist:

- Do You Have a Good Attitude?
- "Know thyself and to thine own self be true."
- Do You Have Good People Skills or Are You the Loner Type?
- Are You Organized?

93 ☐ **Is The Solo Life Right For You?**

Checklist:

- Do You Have Good Telephone Manners?
- Are You Confident in Your Professional Abilities?
- Do You Have Good Computer Skills (e.g. CADD, Word Processing, Spread Sheets, E-Mail, Internet, etc.)?
- How Well can You Master Technology?

94 ☐ **Is The Solo Life Right For You?**

Checklist:

- Do You Have Field Skills (e.g. Total Stations, GPS, Data Collection, etc.)?
- Can You Keep Track of Your Time and Invoice Frequently and Accurately?
- Are You Comfortable being in the Field By Yourself? How About the Office?
- Will Your Family Situation Support or Inhibit Your Ability to Solo?

95 ☐ **Is The Solo Life Right For You?**

- If you are looking to go Solo as a way of avoiding people and working uninterrupted, then the Solo Life is not for you.

96 ☐ **Is The Solo Life Right For You?**

- If you are looking to be in complete charge of your practice and ultimately responsible for your actions, then maybe going Solo is the thing to do.

97 ☐ **Is The Solo Life Right For You?**

- When you are flying Solo, there is no one else to blame.

98 **Going Solo 10 Commandments**

Motivation to Move Forward!

Start with "Why?"

"People don't buy what you do, they buy why you do it."

Simon Sinek, Creator of the 'Golden Circle.'