Business Divorces Can Be As Bad As The Domestic Variety

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There are no good domestic or business divorces. Many who are inexperienced in the ways of business or love will find that they have unrealistic expectations of a relationship the first time they enter into it. They anticipate, for instance, that each partner will maintain that relationship forever and put an equal amount of effort and sacrifice into it. It is nearly impossible for both mates to sustain equal quantity and quality throughout a relationship. Adjustments must be made if the relationship is to survive. People change.

I see many computer consultants and other young entrepreneurial types who are involved in a dating ritual of sorts. They try to put their talents and resources together to develop a synergistic enterprise more powerful than the sum of its parts. Often, however, they come with unrealistic expectations of their own endurance (financial, health or family-related) and a syndrome starts to take hold. This is a syndrome in which some little thing happens and communication starts to break down. As communication lessens, distrust correspondingly increases. Communication is then further reduced and pretty soon the young couple or group of budding entrepreneurs is on the verge of a breakup.

ANTENUPTIAL AGREEMENTS FOR BUSINESSES

Just as an antenuptial agreement can help ease the pain (or at least the complexity) of a domestic dissolution, so can a "Buy-Sell," agreement tremendously reduce the headaches, legal costs, and financial disaster of a business breakup. While not involved in family therapy or family counseling, I have found that a "Buy-Sell" agreement can sometimes bring people back to reality or keep them from getting too far off track at the very beginning.

ELEMENTS OF A BUY-SELL AGREEMENT

The typical buy-sell agreement, also called by a variety of names, such as stock purchase or stock restriction agreement, partnership agreement, or operating agreement for an LLC, normally contains some basic elements. The devices are usually extremely flexible to cover a very wide variety of situations, but the essential elements are as follows:

- **Equity or voting interests in the company cannot be transferred except subject to the terms of the agreement, thus terminating free transferability of interest;**

• A trigger device which identifies the circumstances under which the buyout comes into play. This is sometimes the death of a participant, but it can also be voluntary or involuntary termination of their status as a working employee for the company, bankruptcy or other financial hazard, retirement or another such event;

• An agreement is inserted that other equity participants will either be required or, in the alternative, will have an option to buy out the departing individual;

• A statement as to the method of determining the value of the departing member's interest, whether by appraisal, prior agreement, "book value" or some other agreed upon formula;

• A wide variety of other options, such as non-compete and non-disclosure agreements, installments or structured buy-out provisions, insurance provisions to cover a casualty, etc.

All of these provisions are designed to fit the needs of participants in a business venture and to make it easy for them to know where they will stand in the event one of the "trigger" events occurs. The triggers, as well as all of the other provisions, are entirely negotiable between the parties and can be changed later if all parties agree.

GUESS WHO'S COMING TO THE BOARD MEETING

A buy-sell agreement is probably the last thing any budding entrepreneur wants to think about when he or she is focusing on the synergistic possibilities of a business marriage. After all, there are juicy customer contracts out there just waiting to be picked off the tree and time wasted in the lawyer's office may not help your bottom line. On the other hand, think about how much time you will spend in the lawyer's office or in court (i.e., the "pay me now or pay me later" philosophy) if you and your "date" actually get hitched and entangle your financial affairs and future with no clear way to exit.

If those involved in a business start-up are put through the same sort of marriage counseling as are some newlyweds, there seems, from my experience, to be a substantial possibility of reducing the chances of an untimely divorce. Typically the simple process of discussing when a buy-out would be triggered and how a value would be arrived at, will start to create some sense about the equity of the relationship about to be embarked upon.

The possibility that a deceased "partner's" heir or executor will be inheriting their interests or meddling in the books, or that an ex-spouse or creditor may be looking at your bottom line, should be enough to scare anyone into taking steps to avoid this calamity. Worse yet, the person who promised you he or she would put in an equal amount of quality and quantity may now be claiming his or her half as they leave you high and dry to take a day job or join in a new dating game with someone more financially attractive.

The mechanism to keep all of this from happening is relatively simple and straightforward. Put down in writing and require your partner to sign a document which identifies the

contributions each participant is expected to make in the business and what their share of the rewards will be. Make this as detailed as you can stand and include provisions designed just for you, such as payment plans, insurance, price-setting formula, etc. Finally, review this no less than once a year. I suggest the first of the year after analysis and tracking has occurred, and then readjust the document annually, as needed. Typical annual fixes may be changing the price at which you would buy or sell your interest or changing triggers, adding or subtracting parties or some other condition you need for your situation.

FEATHERING YOUR NEST EGG

There are some other advantages to signing a buy-sell agreement. Not the least of these is the IRS recognition that an agreement to restrict the free transferability of an interest in a business causes a decrease of the value of the minority shares. Therefore, if you sign an agreement with the other equity or controlling members of the group, the IRS should have to recognize that the value of each individual's minority share has been reduced on paper. This can allow you, as you approach retirement age, to divide your interest into fractional shares and transfer them at a reduced rate to your heirs or others (provided the buy-sell agreement allows this).

The buy-sell agreement can save tremendously on legal fees, financing costs and estate planning consequences for the savvy business owner. This is something complicated enough financially, socially and legally that I recommend a team approach of entrepreneurs, attorney, accountant and insurance agent to develop a plan which can be signed at the beginning of a relationship or shortly thereafter. These simple steps should pay big dividends by allowing the parties to clearly see where they might be headed in the event the trigger is pulled.

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