



Business "Divorce" – Friction Between Owners?

Friction can arise between owners with diverging visions of their enterprise. In these strange times, unanticipated pressures are putting an increasing number of previously settled and functional ownership arrangements under stress.

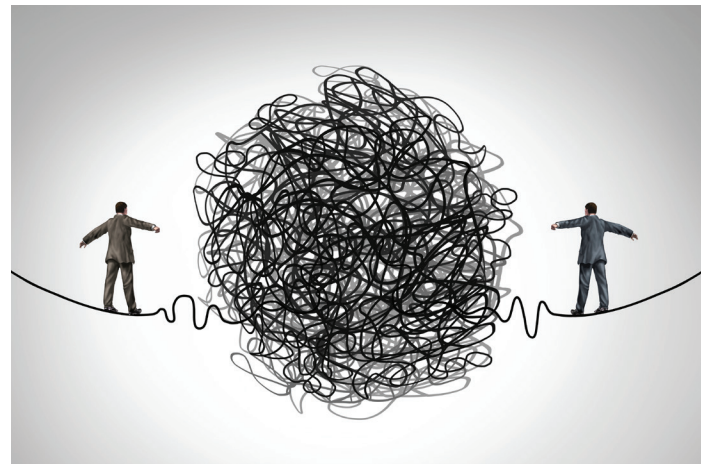
The first step when setting up a business (or considering the breakup of a business) is understanding the rights and duties of everyone involved. An operating agreement, a buy-sell agreement or a close corporation agreement may govern the right and duties of the parties. Additionally, statutory duties and common law principles are always lurking on the edges of the governing documents. Differences in interpretation of those rights and responsibilities will happen. Minority owners have rights that majority owners do not always respect. Majority owners in a closely-held enterprise generally owe a fiduciary duty to the minority owners. They also owe specific limited duties of disclosure and reporting to the minority owners. Minority owners often feel those rights are not being respected. Thus, distrust or disaffection can grow like weeds.

In a 50/50 ownership deadlock, Ohio allows a court to order the liquidation of the enterprise – which may force a more reasonable and mutually beneficial compromise. But it may end up in the death of the "golden goose." In most situations, litigation is a blunt and unsatisfying tool and parties are well-advised to resolve their issues without recourse to the courts. But when litigation is needed, it's needed. A sensible outcome in a business ownership dispute usually happens if good litigation counsel is well supported with sophisticated business counsel on both sides.

Ownership split ups are often entangled in related disputes over who can pursue certain corporate opportunities, who should be subject to non-

competition duties, and who gets customer lists, trade secrets, and other intellectual property. These disputes need to be resolved thoughtfully and be well documented. When one party needs to buy out another, but sometimes it is just about a price, competing valuation experts often becomes an expense of the process.

Good questions and thoughtful drafting on the front end of a business formation can avoid a lot of problems. But no one can anticipate everything. Friction can arise between owners. Legal counsel can help mediate a resolution, explain rights and remedies, help draft changes to any governing



contracts, or help resolve issues in court or arbitration when things can't be worked out by other means. If you need to deal with some strains in the ownership structure of your company or better understand owner rights and duties, give your CPM attorney a call. We welcome the opportunity to help.