

## RESOURCES

# How to Avoid “Marital” Problems in Your Business Marriage

I once heard an entrepreneur lament, “I’ll never go into business with anyone again. I will take in laundry, before I take in another partner.”

This type of sentiment is common to any business owner who has gone through a “business divorce.”

Indeed, business divorces can be almost as messy as any domestic marital separation. This is because any business venture among two or more persons is much like a marriage. It is easy and painless to get into a business “marriage,” but once the honeymoon is over, it can be very disruptive (and expensive) to divide up the interests of the business partners—unless they have a “premarital” agreement.

In the business world, a business “premarital” agreement is more commonly referred to as a “buy-sell” agreement. Like any other “premarital” agreement, a “buy-sell” agreement sets forth exactly what will happen if there is a fundamental change in the relationship between the business partners. Specifically, a buy-sell agreement will set out specific terms by which business interests will be bought and sold if there is a business divorce.

### **The Four “Big D’s”.**

A business divorce can happen in a number of situations. In most cases, a business divorce will be caused by one of the “Four Big D’s”: death, disability, default and divorce.

#### ***Death and Disability.***

Whenever two or more business partners decide to join forces, they must always acknowledge the unpleasant possibility that one of the partners may die or become disabled. So, a “buy-sell” agreement will usually provide for buy-out options if one of the partners dies or becomes disabled. If there is an untimely death, this arrangement will provide the deceased partner’s estate with liquidity to pay estate expenses and to support the surviving heirs. In the case of disability, the existence of the buy-sell agreement will provide the disabled owner with a mechanism for funding the disability period.

Likewise, this arrangement will also benefit the continuing owners, since it will assure continuation of the business without interference from the family of the deceased or disabled partner.

#### ***Default.***

A business separation may also be occasioned at the fault of one or both of the parties. For example, one partner may feel that the other partner is not carrying his or her weight. Or, one partner facing financial difficulties may want to sell out to an outside third party.

Therefore, buy-sell agreements often also provide buy-out options if one partner fails, somehow, to live up to his end of the bargain. Likewise, each of the partners will want a written “right of first refusal” to prevent interests in the business from falling into the hands of outside third parties.

#### ***Divorce.***

In other cases, a business relationship may terminate even where no one party is at fault. For example, one partner may simply decide to retire or move on to the next business opportunity. In either of these situations, there is virtually no way to untangle the interests of the parting owners, unless there is a buy-sell agreement already in place.

### **At What Price and on What Terms?**

In addition to outlining various buy-out events, the buy-sell agreement should also specifically set out, in advance, the exact terms of the buy-out. Thus, the buy-sell agreement should specifically state how a purchase price will be determined, either based upon a specific buy-out price, or based upon some valuation methodology which is clearly described in the agreement.

Payment terms should also be set out in the agreement. In other words, will the purchase price all be paid in cash all at once or over time in installments?

### **Addressing “Control” Issues.**

Buy-sell agreements also often address other “control” or management issues. For example, “inactive” partners may want to set some limit on the compensation paid to employee-shareholders. Likewise, a minority owner may want to have a contractual guarantee that the minority owner always will have a vote in important business matters.

### **Conclusion.**

Clearly, a well-drafted buy-sell agreement will provide all parties with a degree of control over the future ownership of the business. So, like any other premarital agreement, the buy-sell agreement will provide a certain level of security and predictability to all parties involved.

Thus, with proper advance planning, almost any business marriage can have a happy ending.

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