

Virginia

Regulatory Hot Tip 2010 –Three

Professional Insurance Agents Association of Virginia and DC, Inc.

So You Are Getting a Divorce?

In spite of well laid plans, life frequently jumps up and smacks us upside the head! One day you're merrily going along with your life and your business, and suddenly your business partner or co-owner tells you he, or she wants out. Maybe you had seen this coming, or maybe not. Or maybe **YOU** are the partner that has had enough and wants out. In either event, you now find yourself faced with the prospect of completely dismantling your business, a major part of your life. What to do?

Though ending a business partnership relationship is not a subject that anyone likes to contemplate or discuss, I have learned in the course of my practice that some prior planning for such events can be of real help. It can speed up the "divorce" process and, even more important, help insure that the business survives. For example, did the initial set up documents for your business (Articles of Incorporation, By Laws, Operating Agreement, etc.) contemplate the possibility of such an event and incorporate break up provisions detailing what is to happen in the event you and your partner can't get along? This can be thought of as a prenuptial agreement, but it is not a bad thing to have in place, particularly when you are in the honeymoon phase of a business deal and putting it all together. Indeed, even if you did not include such provisions in your original set up documents, going back and adding them now is a good idea even if you and your partner are perfectly happy with each other and never think of splitting up.

But you didn't do any of that pre-planning, and now the partnership is on the rocks. What do you do now?

Well, first see if there is any way to move towards reconciliation for the sake of the business. Consider bringing in a third party business coach if necessary to assist you and your partner to work through your estrangement.

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If that fails or is not possible, then you and your partner need to see if you can work amicably through the terms of the ending of your business relationship. If you are co-owners, how do you divide up the business? Or if the business can't be divided, who gets it and what is the appropriate compensation for the other party.

Admittedly, these are often hard issues, and they almost always come at a time when communication between you and your business partner is not easy. I always recommend to my clients that they should seriously consider using a third party professional to assist in negotiations and provide perspective on possible split-up scenarios. Remember, you are likely doing this for the first time, but a professional will likely have seen many similar "divorces," and be able to offer important perspective and advice. In any event, you will need to consider legal, tax, marketing, regulatory, disclosure, employee relations and a whole host of other issues. Using a professional with experience in business divorces can help you avoid critical, costly mistakes. If you were in this situation had to choose such a person today, right this minute, who would you choose? Perhaps you might want to think about that?

In a regulated business such as insurance, you must also make sure that you keep the regulators in the loop, once you make the decision to separate. Then, make sure business and residence addresses and other relevant licensure information is updated on the Bureau of Insurance's files as elsewhere. Likewise, speak with your professional liability carrier for any tips that they may have for making sure that you have professional coverage in place for the appropriate time period to protect you, particularly if you are exiting the business, for the exposure that you accumulated during the tenure of your business.

Like a husband and wife divorce, a business divorce can either be a building block to the future or it can be a nightmare that consumes you and destroys your future. It is never pleasant but working through the details in a civil manner, either as between the two of you or using a third party intermediary, is the best path to a new and hopefully better future for both parties.

Finally, an important thing to keep in mind as you work through a business divorce is that it doesn't have to be the end of the world for either party. There can be a meaningful life on the other side!