

And You Thought Marriage Divorces Were Ugly, Try a Business Divorce

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Co-owners of a medical practice can fight worse than an old married couple and if there is no way in the ownership documents to "break the tie" the results are usually a financial disaster. Some of the most contentious litigation occurs between two unhappy business partners. Whether the dispute is between deadlocked equal partners, or between minority and majority shareholders, a dispute over the practice's business affairs can lead to catastrophic consequences for the practice, it's employees and the owners. Ultimately, if the dispute cannot be resolved amicably the owners will need a divorce. As the old saying goes, the only ones that make money in a divorce are the lawyers.

Over the last couple of years, many physician practices have been breaking up due to disagreements in compensation and other fundamental management differences. Many times the medical practice involves two physicians who established the practice together at a time when both were excited about practicing medicine and optimistic about the future. The typical situation is one in which each physician owns one-half of the shares, each is appointed as a director, each has the same voting rights and both work for the practice. In this organization, if a dispute arises regarding the physicians' compensation or the management of the company and the dispute cannot be resolved amicably the company becomes deadlocked with no way to break the tie. Each owner has a right to vote his share and each is a director with the right to manage the practice.

Eventually, a deadlocked company creates animosity among the physicians and a hostile work environment for the staff who are caught in the middle and eventually self-destruction of the practice. The animosity typically leads one or both physician owners to begin taking steps that are in the best interest of the individual physician rather than legal entity that is the medical practice. However, Alabama law imposes a duty of loyalty and duty of care on officers and directors of the corporation. When a physician begins taking patient information in order to inform the patients that he is about to leave the practice or if the physician talks the staff into leaving with him, this potentially violates the duty owed to the corporation. A breach of duty by the physician exposes him to a lawsuit and the potential to pay damages.

In order to help prevent a dispute from deadlocking the company, the owners must seriously consider how to address a dispute when initially forming the company. The owners must have an ownership agreement that addresses the voting rights of the respective owners, who will be directors of the company and a dispute resolution procedure to handle disputes among the

owners. Each owner must fully consider the real possibility of what will happen to the corporation and to each owner if a dispute arises. For example, a possible provision could be a "Russian Roulette" clause. The shareholder agreement must ensure that this transaction is binding, but the idea is quite simple in theory. One of the two deadlocked parties serves a notice on the other party. The notice specifies a price at which that shareholder is prepared to sell or buy half of the shares in the company. The shareholder receiving the notice then gets to choose whether to sell his half of the company or buy the other shareholder's half of the company. This means that the shareholder triggering the clause has to choose the price carefully, depending on whether he would prefer to own the company or sell the company.

Unfortunately, sometimes even the best drafted documents cannot save the company from self-destruction if one of the owners refuses to abide by the corporate documents. There are a limited number of ways in which a major dispute between two owners can be resolved in such circumstances. While litigation is sometimes unavoidable, litigation is typically the most expensive, most stressful and least beneficial way for both parties to settle a dispute. As a result, litigation should be avoided if at all possible.

If litigation or the threat of litigation is unavoidable there are some tools available to help resolve the matter. For example, one way to settle a dispute is to petition the court to appoint a provisional director. This individual will act to break the deadlock and enable the corporation to continue to operate. Another alternative involves, appointing an expert to consider the matter and make a decision which is binding on the shareholders. Although this is a very reasonable solution and can work, if one owner was so strongly opposed to a course of action, it is far from certain that the problem will not occur again.

In cases where one shareholder has seized control of the company, an effective remedy for the shareholder who has been removed from control is the right to inspect and copy corporate documents and the right to force an accounting of the business. Under most states' laws, a shareholder has the right to require the corporation to produce and permit the inspection and copying of corporate documents. A shareholder also generally has the right to require the corporation to produce an accounting of its financial records. Using this tool, a shareholder may be able to keep informed of the corporation's activities, which may lead to the enforcement of other rights.

Finally, an owner can file suit to dissolve the company or the owners can wind up the company. Both are drastic solutions. The business or assets are unlikely to achieve the best market value if they are being sold through a liquidation. It is not a quick process, the assets are typically valued very low and there are substantial fees to pay to the practitioners handling the matter.

Using litigation to resolve a dispute among co-owners should be the absolute last resort. It is expensive, time consuming and both parties generally lose. Rather, co-owners should diligently work to resolve their differences outside the litigation process no matter how bitter the feelings between owners. In the end, the owners come out ahead by compromising even if it means voluntarily dissolving the corporation.



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