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North Carolina Law Life

The Business Divorce

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Like members of any group, lawyers tend to talk shop when we get together. Lately, I've heard a lot of grousing from other business attorneys about "business divorces." My colleagues are looking for solutions where there are few good options.

Business divorces are when the principals of a business (shareholders, partners or members of an LLC) can no longer function together to run the business. It might be caused by strained personal relationships, financial pressures or even bad business decisions. These situations have significant financial implications for the business owners, and are as highly emotionally charged as the breakup of a marriage.

Often attorneys are asked something like this, "We own a restaurant. My partner takes a lot of money out of the register and I don't know where it goes. He takes care of all the books. I don't think he's paying all the suppliers, withholding taxes or reporting all our income. Every time I try to talk to him about this, he gets hostile. How can I force him out?"

Or this: "I don't like the direction our business is going. My partner is too aggressive. She's promising things we won't be able to deliver, and I'm too stressed out. I want to leave the company. She told me to go ahead, but how can I get her to pay me for my share?"

The somber fact is that without a pre-existing written agreement (shareholders agreement, buy-sell agreement, operating agreement, partnership agreement), there is often very little an attorney can do to preserve the value of the company while getting rid of one of the owners.

So, we describe all the reasons it is worthwhile to negotiate a solution and can sometimes get the parties to the table to talk. But if they are too emotional, often the only solution is to force the company to dissolve, and distribute the assets. What a waste, all the way around.

What makes this particularly frustrating to attorneys it that these situations are entirely preventable. Every business with more than one owner should have a written agreement that states clearly what will happen if a principal:

- Dies
- Becomes disabled or incompetent
- Goes bankrupt
- Gets divorced
- Or simply wants to be able to leave the company.

These agreements give a process for a principal to broach the subject of leaving, and a mechanism for setting the price and the payment terms. It can provide an automatic mechanism for buying out the interest of a principal who dies or becomes disabled. It can protect the business from the creditors of any individual owner.

A buy-sell agreement generally costs up to a couple thousand dollars to draft, yet a surprising number of business owners either don't know to draw one up or are too cheap. When things change, they are imploring their attorneys to help, and we can't.