DON'T LET BUSINESS DIVORCE HAPPEN TO YOU

As a business divorce lawyer handling owner disputes commencing with negotiation ending in litigation people ask me what I have learned about business owners avoiding business divorce. So many things can cause business owners to divorce, but there are persisting common stories. Corporation management consisting of directors and officers, or in LLC's managers, due to their position of control, are ultimately the people that cause the owners to suffer irresolvable conflict. But here are some tips to avoid or reduce the risk of business divorce.

1. Trust. The unique nature of a private business and the relationship of its owners who usually serve in management requires faithful trust. The element of distrust is present in every business divorce. Distrust usually stems from not discussing or even hiding financial transactions from other owners. Questionable decision making unbeknownst to the other owners creates distrust. So keep the books, financial and business records and decision making in front of all owners.

2. Self-Dealing. When an owner takes company funds for their personal benefit, to the exclusion of other owners, conflict arises. Failing to properly account in the books and records which could cure the problem, (as long as other owners were treated fairly or equally), exacerbates the problem. Taking company funds to pay for your personal flight lessons that otherwise could have been distributed as profits or used as operating capital is improper. Make sure company funds are used for company business not stolen to the exclusion of other owners.

3. Controlling Management Decisions Without Meaningful Input From Other Owners. A sole dictatorship excluding other owners from management is usually not well received. Put decision making on the table, gather input and fulfill owners' expectations of contributing to the management of the company. A manager or officer may need to make the ultimate decision or perhaps a controlling group in management such as a majority of the Board of Directors. Democracy must reign. A democracy includes the right to be heard. So let all owners be heard and contribute meaningfully to management.

4. Engage in Similar Management Philosophy. With the inception of a private business, the owners immediately share common goals and means to achieve those goals by virtue of creating the company. Stay on task. As the business grows and is subject to normal business cycles, opportunities are presented to alter that management philosophy. Have a mission statement and stick to it. Follow precedent. Discuss openly and set short term and long range policies that all owners can live by and follow them in the operations of the business. For example, set your policy on reasonable salaries and when profits

are available an appropriate profit distribution without taxing the capital of the company.

5. Do Not Take Advantage of Your Position. A person or a faction of people that can control certain aspects of the entire business may be in a position to take advantage of the situation for themselves causing business divorce. This may lead to financial rewards going to one person or faction discriminating against another. Remember the golden rule. And, always be fair, honest and reasonable with your fellow owners. By keeping the best interest of the company and your fellow owners at the forefront of your decision making you will not be taking advantage of your position.

6. Family Issues Are Not Business Issues. Closely held businesses are oftentimes owned only by family members or if not, by a mixture of family members and others. Separate family issues from business decisions. Intra-family disputes at the dinner table should not spill into the board room. Check sibling rivalry, parent/child issues, in-law problems, extended family concerns or other family conflict at the door.

7. Solve Personality Conflict. Owners enter into business relationships as friends or at least not as enemies. They perceive by joining forces they can create a successful business to support themselves and their families. Hopefully, these business owners have vetted each other enough to understand what to expect going into the relationship. Have they spent enough time together in discussing and hashing out their business plan? Can the business owners accept who each of them is and the personalities the other owners bring to management? Don’t jump into business together too fast. But if conflict does arise because of personality traits, consider not only an open discussion but the possibility of seeking counseling from business psychologists or relationship advisors specializing in business.

8. Owner Agreements. A Shareholder Agreement in a corporation or an Operating Agreement in an LLC or a Partnership Agreement; these documents are designed to provide the rules and regulations of how to operate the business. Good agreements that provide conflict solutions, problem solving for owners and an exit strategy are vital. Follow them.

9. Act In Good Faith. In managing the company for the benefit of the company and the other owners, always act in good faith, in the best interest of the company as you would expect a reasonable management person to do under similar circumstances. Investigate, gather information and make informed decisions for the benefit of the company and its owners. By doing so you will be protected under the law by the Business Judgment Rule. Generally if you exercise business judgment for the benefit of the company and in good faith you are acting prudently in conformance with the Business Judgment Rule. Even if your business decision may not be the best one, you properly discharged your

responsibility. A judge cannot question such decision making. You have the right to rely on others and in particular professionals who provide input into decisions beyond your expertise. If you think there may be a conflict between you and the company regarding a business decision, opportunity or contract, bring it to the attention of the other owners and have it approved by them or ensure that it is fair to the company.

Be honest with your business partners/owners. Treat them with respect. Be fair, reasonable and put the Company's interest and your partner's interest first, which will benefit you. Open and regular communications and transparent access to the book and records assists in meaningful management for all owners. These basic management principles will serve as anchors to avoid business divorce.

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