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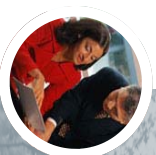
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STEPHENSON SNOKHOU & FOURNIER Strategy NEWSLETTER

Know Your Partner Before You Commit to Joint Ownership

PATIENT DILIGENCE BEFOREHAND WILL PAY OFF



Develop trust in your relationship before starting or buying a business with a new partner.

Many people jump too hastily into relationships and the result isn't always pretty. That's just as true in business as in personal relationships. The key to success is homework. Prospective partners need to work out the details before taking that fateful step. They also need to draft a contract that spells out how everything will work and what happens if it doesn't. For co-ownership of a business to work, you have

to plan for tomorrow and the day after. There are three basic elements to creating a strong partnership.

Know your partner. The biggest mistake business partners make is jumping in before getting to know each other. Consider taking personality tests and talking to colleagues and family members. Evaluate your shared and differing values, ideals and goals. Determine whether you are comfortable expressing your ideas and expectations. Think carefully about areas where you disagree or mistrust one another. Develop a strong connection so that you feel at ease articulating your opinions and expectations.

Consider the fit. Your skills should be complementary. You should appreciate your partner's skills and respect his business judgment. Try tackling a project together that requires cooperation. Choose a partner with strong experience.

Keep talking. Communication is important at every stage, but especially at the outset of a business relationship. Clear and effective communication is key to success among business owners. You and your partner will continually need to share your visions for your business with each other. Establish routines for daily communication. Evaluate your goals on a regular basis. Set up a group of independent advisors whom you both respect. And, cultivate a group of mentors who can act as sounding boards for additional advice. Even if you don't agree, talking about your concerns openly and frankly will promote understanding and respect.



Shareholders and Owners Agreements

REQUIREMENTS FOR DEFINING A BUSINESS RELATIONSHIP

Although shareholders and business owners generally base their partnerships on mutual trust and shared goals, it is not enough to have just a handshake about the terms of owning a business with a co-owner. To prevent future disputes and confrontation, shareholders and co-owners need to put their agreement in writing.

The contract between partners needs to address the many what-ifs associated with the business. These might include what happens if additional capital is needed and what return each owner is entitled to on their investment.

It should address compensation. For example, how will compensation be determined, when will it be paid, and



how might it be deferred or adjusted? Consider whether the proportionate ownership interests of the owners will change over time if milestones are achieved. These issues can be divisive if they are not considered in advance, before an urgent decision is needed.

Partners should also consider whether all owners will have the right to buy more equity if it is offered by the company. It is critical to address how to break a tie if ownership of the business is divided 50/50. It is also important to define the roles and responsibilities of each partner and the consequences of not fulfilling those requirements.

New business owners should consult with a lawyer or business advisor to obtain a checklist of issues to consider. That person should facilitate a discussion between the partners and advise them how to best draft a contract that suits their specific needs. This process can help the owners evaluate their new business, as well as addressing crucial areas relating to operations and decisions.



LEGAL TALK

Choosing a Business Name in Texas

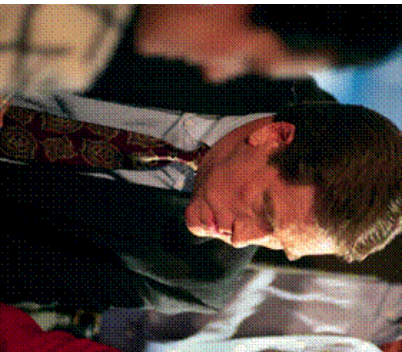
Before forming a new entity in Texas, you should first check with the Secretary of State as to availability of your chosen name. You can do this quickly over the phone. No Texas entity can be formed if its name is the same as or deceptively similar to an existing entity or a reserved or registered name. Entity names also need to avoid words that imply a purpose for which the entity cannot be organized such as 'insurance,' 'bank,' or 'trust.'

Even if the state allows you to form an entity, you are not guaranteed the right to use the name of the entity. A name can be available for use by a new Texas entity, but that same name might also be registered under state or federal trademark registrations, assumed names filed with a county or secretary of state, or other sources that might indicate common law usage or reveal possible trade name or trademark infringement. Never make financial expenditures or execute documents using a new name based on a preliminary name clearance from the Secretary of State.



Tips for Successful Negotiations

EXCELLENT SKILLS CAN YIELD EXCEPTIONAL RESULTS



Negotiation is a process; preparation, patience and perseverance will carry the day.

People need to be given the right amount of time to work through emotional and factual issues during negotiations. This does not have to result in a marathon, but generally it should never be a sprint. Responding to anger with respect and kindness will often defuse the situation and create an opportunity for winning.

Strong negotiators show respect without being unfriendly, defensive or condescending. You don't have to agree with the other side, but you can show empathy by listening and showing that you understand the other point of view.

A good negotiator creates a positive perspective. For example, rather than focusing on the cost of a proposed expense, you can focus on the benefits and savings that will result if the expense is approved. It is important to convince the person with whom you are negotiating that they are succeeding and creating value. Giving them a positive perspective about the result you want to achieve allows them to have that sense of security and control.

Preparation is critical to strong negotiations. Do your homework by investigating and analyzing. The more knowledgeable negotiator will usually prevail. Your authority and success will be directly tied to the amount of work you put in before coming to the table.

Assertiveness is another important skill to develop. This does not mean you should be aggressive; it simply means you should display confidence and be direct in your manner. Clearly state your perspective and position. It might be appropriate to take an aggressive posture if the other side refuses to listen and pursues untenable positions. This can require a bit of a balancing act between showing empathy and refusing to give in to unsupportable demands.

It is key to hold back your emotions when negotiating. This takes a great deal of discipline. There are situations where emotional displays can be appropriate and effective, but sometimes you may be required to display an emotion that is the exact opposite of how you really feel. The best way to take your emotions out of the equation is to have a third party conduct the negotiation.

It goes without saying that you need to establish your limit on what you should and can pay. This keeps your spending in line and makes you sound more convincing if you say you will walk away from an unacceptable price.

Finally, be on guard for issues that are not important. Your opponent might pick one as a red-herring and frustrate you by holding his ground until you finally agree to concede a major point.



Q & A

Q: "Should we include a mediation or arbitration clause in our shareholders agreement?"

A: "For many co-owners it is advisable to agree up front upon a mechanism that will enable or even require you to settle your future differences out of court. You can consider a mandatory negotiation period, you can name a neutral advisor or call for mandatory mediation, and you can set up a mechanism by which either owner can submit a dispute to arbitration, among other possibilities. If you and your business partner have a dispute down the road, these strategies can reduce your costs and streamline the process of resolving your differences.

There are many considerations associated with crafting the ideal dispute resolution strategy for your particular business. You should consult an expert to help you decide which process best fits the needs of your organization and its owners."



Stephenson Snokhous & Fournier is pleased to announce that JENNIFER MORRICE ELSKES has joined the firm as a partner and BRAD PORTER has joined the firm as an associate attorney.

Jenny Elskes advises clients on estate planning, probate and trust law. She also represents clients in estate and business planning for closely-held businesses, including family limited partnerships.

Brad Porter's practice primarily focuses on the representation of buyers, sellers, developers and owners of commercial and residential real estate. Brad also handles business transactions and environmental law matters for the firm.



Meet Our New Lawyers

Exit Clauses for Co-Owners

CONSIDER IN ADVANCE HOW YOUR PARTNERSHIP MIGHT END



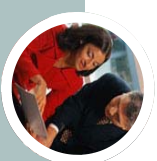
It is invaluable to plan ahead when forming a partnership. Your contract should spell out the circumstances under which one partner would be obliged to buy out the other's interest. For example, if one partner wants to quit, the other might be required to buy. If both want to end the partnership, they could sell or liquidate and

divide the proceeds or assets. When one partner is obligated to buy out the other, the agreement should specify how the purchase price will be determined. This can be done by naming a CPA, developing a formula, or providing for an appraiser. It is important for these decisions to be binding.

Your agreement with a co-owner should also address possibilities such as personal or company bankruptcy, disability, death and divorce. It should contemplate what happens if one owner decides to walk away from the business without the other's consent. Consider, too, what happens if one partner fails to live up to the bargain, such as by not contributing his share of needed funds.



Even though partners have high expectations and anticipate the best outcome when they first form a business, it is important to plan ahead for other possible outcomes.



Useful Brilliance

Whenever you are asked if you can do a job, tell 'em "Certainly, I can!" Then get busy and find out how to do it.

Theodore Roosevelt
1858-1919

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