

BUSINESS

WHAT TO DO WHEN BUSINESS MARRIAGES GO BUST

By ERIN HARRINGTON

For closely-held businesses, breaking up can be hard to do. Busting up a business often comes with many of the same heartaches inherent to dissolving a marriage. "Feuds can go on a long time and cost a lot of money," says Roy Breitenbach, an attorney and partner with Garfunkel, Wild & Travis, P.C. in Great Neck who's handled many business breakups. "I call them business divorces because they're similar to matrimonial divorces. It's about the emotion."

Emotion really is a bigger part of the equation for closely-held businesses than for publicly-held companies. They're more vulnerable to partner, member, or stockholder disagreements, and these disagreements are often between blood relatives in the case of family-owned businesses. The potential for a messy breakup definitely lurks because closely-held businesses often operate with only a few partners, no public market for selling stock, and individuals with different agendas driving them.

It's when business gets personal that the most emotional damage can be done, and result in a business divorce. Particularly at risk are private, professional practices. "It becomes more of a personal thing with, say, a doctor, dentist or lawyer," Breitenbach points out.

"It's a pride and reputation issue." Many have spent years building their practices. They're aging and want to slow down a bit. But when that senior person who's run the practice alone for years decides to bring on a partner, they have to plan properly and put provisions in place. "This is especially true with doctors. They do so much on trust and often aren't business-minded. Many don't have an agreement or settled for one that doesn't have the provisions they need. Later, the battle in court comes down to determining what those provisions were," he adds.

Most disputes arise from issues like how big a piece of the pie the new partner is entitled to, and fair division of labor. Many professionals feel they've invested their sweat and tears into building up their practices and have earned some serious time off at this stage. It's at that point that terms and provisions of the partnership should be put clearly in place, Breitenbach cautions.

Issues like profit-sharing are critical. Will revenues be divvied up equally, or be productivity-based, relative to how much money each makes for the practice? This can be tricky for all

involved, as the senior partner built the practice, while the new one feels they're putting in more hours and should be making more money.

Surprisingly, money isn't always the grounds for business divorces. With family businesses, personal issues often tear them apart.

Breitenbach recalls a case he handled for a plumbing supply business being run by two brothers. "It was about so much more than the money. This was about all these issues from their childhood. Questions like who did the dad like more and, consequently, who should keep the business, came into the mix. The brother who was opted out had real emotional issues about not having the legacy of the business to pass on to his children. I litigate these cases all the time and see some tragic stories. The emphasis has to be on avoiding them before they happen because they can wreck families." The way to do that is pre-dispute planning. "Have a good agreement drawn up beforehand, similar to a pre-nup, to make sure everyone's rights are defined beforehand."

There are key provisions Breitenbach points to that should be addressed in that agreement. What happens if a partner becomes disabled? How long will the others carry them before they

have to be bought out and at what price?

Retirement – are the terms based on age or assets or, in the case of a manufacturing company, inventory? Professional practices typically have small hard assets, so questions about its fair market value should be answered and whether or not the departing partner is entitled to a share of ongoing accounts receivable. And, if someone opts out, will there be a provision to keep them from competing with the business? What happens if you want to sell the practice or dissolve it? Another area of conflict comes when someone is hired with the promise of being made a partner or shareholder. How exactly do they buy into the business or practice? These are all issues that have to be worked out and drawn up beforehand, Breitenbach cautions, not after the fact, when feelings are hurt and breakups are inevitable.

Clearly, it's a lot cleaner, and cheaper to engage an attorney when you enter into a business marriage as opposed to when you're facing a business divorce. But many people don't, as Breitenbach estimates there are hundreds of business divorce cases on Long Island every year.

When it comes to that, Breitenbach recommends hiring a practitioner who specializes in business practices and contracts. New York has complex laws regarding corporate dissolution as well as only a handful of Supreme Court judges who hear these cases in Nassau and Suffolk. "You really need a lawyer who's used to being in front of those judges, who's on the right page and can discuss these issues with the judge. There are a lot of pitfalls you can get trapped in."

Interestingly, more business divorce cases land in court than other types of cases. According to Breitenbach, "About 95% of other court cases settle before trial, and most are personal injury cases. But with business divorce cases, you're talking about a lot more emotional issues and people who are more reluctant to settle."

It's enough to give anyone the pre-business partnership jitters and reinforces the wisdom of not entering into any union lightly.



Roy Breitenbach