

The Fish Law Firm PC

Newsletter--November 2009

Focus: The Family Business



Greetings!

As the holiday season approaches, we look forward to spending time with family. Unfortunately, disputes are a serious problem for many small and medium sized family-run businesses. This month's newsletter provides pointers for how to keep family businesses together and what to do when problems arise.

Sincerely,

David Fish
The Fish Law Firm, P.C.

All In The Family

Going Into Business With Relatives Can Make You Cry Uncle

America is full of family-run businesses. Some date back generations. There are many advantages to working with family members-similar values, mutual trust, and long standing loyalty.

However, when members of a family business have conflict, it can be very stressful-sometimes worse than a nasty divorce. Disputes in family-owned businesses can--and often do--destroy the company. The internal strife among family members can be far more damaging than a company's most fierce competitors.

To avoid having your family broken up and to avoid destroying your business, keep these pointers in mind:

- 1. Are You On The Same Page?** Do you have the same work philosophy as your relatives? Some family members like to work less and avoid growth. Others want to work long hours and grow. Inevitable resentment arises when one relative thinks the other is slowing down the business-while the other relative thinks the rapid changes are like driving 90 miles per hour off of a cliff.
- 2. Who Gets The Biggest Piece Of The Pie?** Every family business dispute I have litigated has involved monetary disputes. If you are working harder and bringing in more business, should you get more money? That is how many non-family businesses operate to encourage hard work; but family businesses often split profit equally. In some cases, sharing money equally (or unequally) can be a recipe for resentment and irrevocable disputes.
- 3. The Family Role May Not Be The Same As The Business Role.** Just because mom and dad were in charge when you were growing up does not necessarily mean they are in charge of the business now. When parents relinquish ownership in a company, they typically also give up control. While a respected parent (or other family member) can often be useful in helping to resolve/mediate disputes, this person must realize that the law does not necessarily give them the right to call the shots-like they did when the kids were younger.
- 4. Mediation.** When disputes do arise, it is important for family members to communicate. Serious disputes often warrant outside help by a mediator who is someone that helps the family members discuss, manage, and resolve differences. Some family businesses will turn to a lawyer to help mediate a dispute; others turn to a respected family member. There are also other professionals (such as psychologists) who help family businesses resolve disputes.
- 5. Contracts.** Members of a family-run business need to enter into appropriate business contracts with each other. Unfortunately, many family businesses do the exact opposite by having no written agreements. Written partnership and other agreements are critical to address such issues as buy-out obligations, what happens when a family member dies or becomes incapacitated, how money is split, and who owns what

portion of the business. Remember, in 20 years, dad might forget that he told you "the business will all be yours someday"--or maybe he told the same thing to your stepmother.

Unfortunately, many family businesses cannot be mended. When reconciliation fails, family members are sometimes better off ending their relationship. At that time, it is important to make sure that you protect those rights to which you are legally entitled. Sometimes this means buying out your relatives and other times this means removing them from the business. Regardless of the resolution, it is important that it be done in a way that does not violate the legal duties that you owe to the business or your partners.

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