

PARTNERSHIP BUYOUTS AND SUCCESSION PLANNING

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If you have partners in your business, then a partner buyout may be part of your succession plan. You might be the partner being bought out. You might be buying out of one of your partners as part of their succession plan. Or you might be buying out a partner to make room for a family member or one of your senior managers to step in, or to get the business ready for sale.

Unfortunately, as in most human endeavours, there are many forces in business that challenge that co-operative spirit. And nothing is more volatile than the combination of money and emotion. As a result, it has been my experience that a poorly handled partnership succession plan can be as intense as the breakup of a marriage.

Why Partnership Disputes Arise

After assisting many clients manage partnership disputes, I have concluded that partnership disputes usually arise for one of two basic reasons:

- There is a **perceived disparity between contribution and reward**. Most of us are only willing to carry our partners for so long. Whether we are really carrying them or not is a different question. In this situation, perception truly is reality.
- There is a **breakdown in trust and respect**. Like any other relationship, trust and respect are the foundations of a business partnership. If they erode too far, the partnership breaks down.

Issues like this can simmer below the surface for a long time, only to surface when a partner is ready to retire, or his or her partners believe he should be retired.

Knowing the reasons for partnership disputes will give you a much greater ability to get to the heart of issues if difficulties arise with your partners in the course of your succession planning.

The Role of Success in Partnership Disputes

Ironically, nothing stresses a partnership more than success. After all, there is really nothing to fight about if a business is not successful. There may be a lot of loud finger pointing, but at the end of the day no one wants to spend money fighting about it, and everyone needs to get on with paying their mortgages. On the other hand, the more successful the business, then the more heated the dispute can become. There is more to fight about, and more financial resources to fund the fight. This can seriously manifest itself at succession planning time, especially if the succession plan is not well thought or carefully executed.

The Role of Partnership Agreements in Partnership Disputes

Good professional advisors will always counsel clients to have a partnership agreement of some kind. Among other things, they are supposed to grease the wheels when it is time for a partner to exit the business. They can in fact do that. If you are dealing with a succession issue and have a partnership agreement, you should review it carefully and understand how it impacts what you can or would like to do. However, there are a couple of things to keep in mind:

- You can still do what you want as long as you all agree on it. The partnership agreement does not limit your options, it simply provides something to fall back on if you fail to agree on something else. The

best solution for all partners may be different than the one anticipated when the agreement was first drafted. Do not be afraid to explore other options.

- If there is something worth fighting about, and the willingness to spend the money, having a partnership agreement will not keep you out of court. There are partnership agreements in place in about 50% of the partnership disputes I am involved in which go to court. Depending on the circumstances, a party who wants to can find some reason why they think the partnership agreement is producing an unfair result and should be overturned by a judge. Having an agreement is no guarantee you will not end up in a messy situation.

So why do we bother with them?

- The process of doing a partnership agreement is very important. It produces alignment. It is like finding out if you want to have children before you get married. It is a very worthwhile thing to do.
- It forces someone who wants to do something different to really have to explain themselves. Legal contracts are taken very seriously. They are not overturned without some darn good reasons. They substantially reduce the risk of a messy situation, but they do not eliminate that risk. After all, the only way to eliminate risk in a transaction is to not do it at all.