North Carolina Law Life

Proper Planning Can Avoid a Business Divorce and Save the Business

By: Donna Ray Berkelhammer. ***Monday, August 20th, 2012***

The end of a business relationship is no less painful or emotional than the end of a social relationship. Many entrepreneurs in the glow of start-up fervor do not anticipate their management may become dysfunctional or the founders' visions will diverge. Failure to consider an exit plan at formation can destroy a business, but good early planning can provide an orderly exit when the relationship falls apart.

The most common events to trigger the buyout of a shareholder, member or partner in a business are: death, disability, deadlock/expulsion/minority shareholder oppression, voluntary withdrawal (retirement or wanting to pursue other options), termination of employment, bankruptcy/insolvency, family disputes and divorce where the spouse will not relinquish rights to the company.

Formation documents (such as **Shareholder Agreements**, **Buy-Sell Agreements**, **Operating Agreements** or **Partnership Agreements**) should include requirements for the company to buy back the ownership interest upon these triggering events. It should also specify how the price will be determined. Good planning should include provisions that could make deadlock harder to achieve, such as electing an odd number of directors/managers, or appointing outside/independent directors who have tie-breaking powers.

There can be mechanisms where an owner can force a buy-out if he or she is no longer happy in the business. These are known as **Russian Roulette**, **Texas Shoot-out**, or **Dutch Auction**.

Where there has been no advance planning, there is often little that can be done to force out an owner or to accommodate an owner who wants or needs to leave the business and get his money out. Some states have judicial dissolution statutes that can force a business to be dissolved upon certain (very limited) events, and there are generally some protections for minority shareholders who are being "oppressed" by the majority in an attempt to force them out (cutting salary or benefits, blocking them from management participation, terminating employment, refusing to declare dividends). These are messy, costly options that make it hard for the business to survive the ousting of an owner, and are no substitute for proper planning at formation.