

Liquidation of the Company to Resolve Owner Disputes – Just How Simple Is It?

Question: Three owners of a business are struggling – maybe it is the economy, maybe it is their relationship. Two of them have control of the company and decide to liquidate the company, but plan to continue working with the same clients without the third owner. Is it really that easy?

Answer: Maybe if everyone wanted to walk away, move to a new state and work in a different industry. But of course, that is almost never the case.

In reality, the liquidation of a business is more complicated, the company can stay in business for a period of time to wind down (but of course the owners are the people who are likely to do that) and the profit during that period would be shared among the owners. The company could also just shut its doors and find someone else to finish the work. The company must sell its assets in a fair manner, so no owner can take a company asset for his or her personal benefit.

What about the company's bank debts and accounts payable, plus the office lease? In liquidation, the company's debts have to be paid before owners can take anything. Of course, if an owner is one of the company's creditors, for example, if she loaned the company money, she will be paid that like any other creditor. An owner can be paid for her services during this wind down phase.

As to the lease, unless they are at the end of the lease, there is likely some ongoing liability to the landlord – yet another debt that has to be paid.... Or perhaps one or more of the owners will take on that lease obligation and stay in the premises.

Think about the practical problems.... The two owners who vote to liquidate want to keep the company name and the company telephone number. They don't want to pay the third owner for them --- if the company is liquidated, who gets these assets?

Another issue will be the two owners may want to keep the client's records, since the company is being shut down and has no use for those records. Should they be able to take them and use them in a new business without paying for the records?

The third owner is the main contact with the company's biggest client, and the company has a project that is only half completed. The third owner is willing to complete the project and wants to keep all of the future profit and pay the other two owners nothing. That's okay.... Right?

These are the things that people struggle with or battle over as they try to use a liquidation to resolve a dispute.

If you are already in this situation, you need good legal and financial counsel. Counsel can help negotiate a path through this situation possibly limiting costs and the time and energy drain of a drawn-out court battle.

To avoid this situation, a written agreement needs to be in place. People choose to liquidate when they cannot find another way out of a bad situation. If a buy-sell agreement is in place, the bad situation can be avoided. A buy-sell agreement sets out the agreement prior to someone leaving the company, for whatever reason. The buy-sell agreement can include a “business pre-nuptial” if you will, that provides how parties can break apart. These documents are much less expensive beforehand than preparing for an all-out battle in court should the parties choose to break apart and liquidate.

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