

My Co-Owner and I are not Getting Along – What do I do?

Often co-owners of a business struggle with their relationship. After all, this is rather like a marriage and it takes a lot of time and effort, a lot of respect, and some luck, to make it all work out. When it doesn't, what can you do?

In part, this depends on the relative voting control of the parties. In part, it depends on the roles of the parties. Hopefully, they have a well-drafted buy-sell agreement. And of course, it also depends on the personalities of the parties.

Voting Control: If the co-owners are 50/50 owners with equal rights, of course neither has any more voting control than the other. You might think that of the ownership is 60/40 then the 60% owner has full control – but you could be wrong. It depends on the documents – the Articles, Bylaws or Operating Agreement, and possibly other agreements. In some cases a few decisions, or even many decisions, may require a 2/3 vote (which in a 60/40 deal really requires a unanimous vote).

Also, you may have one owner, possibly the founder, who has 90% of the voting stock and only 30% of the non-voting stock. In that case, that owner might control all votes, or at least most votes even though overall he or she only owns 35% of all of the outstanding stock.

Roles: Let's assume that it is 50/50 ownership but one owner is and always has been the President and CEO. What power does that owner have the power by virtue of his or her titles (and the duties and responsibilities that go along with them). Can that owner fire the other owner? The documents could clearly prohibit this, but without that documentation there may be a question. Of course, firing someone as an employee does not resolve the ownership issues, but it might provide one side or the other some leverage.

Buy-Sell Agreements: What happens if one of the parties quits (or is fired)? Does the other person have to buy the departed owner's stock? Is that a good idea or can that create further problems (e.g., the first person out gets a better deal). Can one or more of the owners trigger a resolution by invoking some kind of "Texas Shoot-Out?" Is there a way out of this mess without taking the entire company down?

Personalities: In the end, the personalities of the parties come into play. One may be more of a driver, or more impatient, or less decisive. One may be more of a spendthrift or a difficult employer. One may simply be not as good at the job, including the job of being a business owner, as the other. This is where the respect and time and effort

come into play. To what extent will the parties try to work it out, and when will one or more decide to call it quits.

Resolution Alternatives: After trying to resolve things on their own, where can they turn to help resolve this issue? The owners could hire a counselor to help them through this – this could be a business consultant, a relationship counselor (remember the analogy to a marriage above), or a business coach of some kind. The parties could agree to mediate the issue, or even submit it to binding arbitration or take it to court. And the documents could give either party a right to force a mediation, arbitration or court resolution.

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