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## Treat the Family Business Like a Business

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Business and family often do not mix well. It is easier to start a family business than it is to end one. When disputes arise, ground rules are necessary to resolve the disputes or chaos ensues. Accordingly, if you go into business with family members, follow the same formalities you would expect in any other business: (1) retain competent counsel (not your cousin in law school) to draft the formation documents and (2) hire a solid accountant. Regardless of what type of entity you create, ensure the formation documents clearly indicate titles, ownership interests, responsibilities, how much money each person is contributing, grounds for termination of employees, what information is considered a trade secret owned by the entity and how profits and losses will be distributed. The more detail, the better.

Once the formation documents are signed, follow them. Frequently, family members treat a family business like a piggy bank. If one family member needs money to pay a personal bill, he asks for a company distribution or simply takes the money without asking permission. This begins a snowball effect. Soon, other family members are using company money for personal expenses. Records of who spent how much on what are not kept. Inevitably, one family member feels the "distributions" are inequitable and cries foul. Litigation follows. The lawyers make money, and the family business withers.

Litigation involving family members is overly contentious. Many times, the lawsuits stem from a misunderstanding about family members' rights or roles, neither of which were explained in the formation documents. Childhood wounds are reopened, and the case becomes more about the unkind things said at Thanksgiving dinner than the dispute at hand. Family members wrongly believe they can "throw out" misbehaving members and take away their interest in the

company. The members exercising control act hastily and without counsel. When counsel is finally hired, members are surprised to learn how many mistakes they made and that the consequences for these mistakes are severe.

When starting a family business, do not assume you can ignore business formalities. If you treat the family business like a real business, you will reduce the chances for messy litigation if things go south.

Call us when you have a family business dispute – an area where we have significant experience. We will evaluate the dispute, provide you a strategy, and execute it. 949.631.3300, wilson@kleinandwilson.com

### Mark B. Wilson

Mr. Wilson, a trial attorney, has won nearly every case he has tried or arbitrated. He lost only one jury trial but then obtained a complete reversal on appeal. This year, Mr. Wilson was listed in the Super Lawyers® Top 50 Orange County list, and he is a past Chair of Orange County Bar Association's Business Litigation section.



Mark B. Wilson

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