



Have You Reviewed Your Shareholders'/Operating Agreement?

by Mark B. Wilson, Partner, Klein & Wilson

When starting a business, the last thing you want to think about is what happens if the business goes sideways. But you should.

"Begin with the end in mind," said the late Stephen Covey. Executing a carefully drafted shareholders'/operating agreement does just that. These agreements set the rules of the company and the owners' expectations. They cover issues such as management of the company, how disputes will be resolved, regulation of company shares, and administration of owner departures. Careful drafting of these agreements forces the owners to have honest discussions about their business. It is usually easier to have these discussions when starting the business, rather than after disputes arise. If you already have a shareholders'/operating agreement in place, you should read it to make sure you understand it and to ensure it covers all contingencies. Many owners are shocked to find what is in their agreements.

Conflicts are inevitable when running a business. Having a clear road map to address potential disputes makes resolving them easier. If you do not have a plan in place, the law will impose one on you, and you might not like how the law works. A well-drafted agreement can provide instructions on what to do when an owner wants out or when one owner wants to purchase another owner's interest – issues that frequently arise. The agreement can also describe when and how to oust a misbehaving owner – another common problem.

What happens to an owner's interest when that owner decides to leave the business? Without an agreement imposing restrictions on the transfer of shares, an owner can usually sell his or her shares freely to anyone – including a competitor. Such a transfer can be disastrous.

Without a properly drafted shareholders'/operating agreement, you and your business partners are flying blind. Plan ahead and address these important issues in writing so there are no ambiguities. You will save grief and money in the long run.

Call us at 949.631.3300 if you have a shareholder/member business dispute. We will evaluate the dispute, provide you a strategy, and execute it.

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.



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