

BREAKING UP IS HARD TO DO (SO PLAN AHEAD!)

Many of us have experienced bad break-ups; few relationships last forever and parting ways can be an emotionally charged event. Dissolving a business partnership is no exception. But terminating a corporation does not have to be miserable or confrontational. On the contrary, any business break-up can be fair and just.

While most dissolutions are unexpected and complicated, a dose of foresight can make these events feel deliberate and straightforward.

The best course of action for ending a business relationship entails arriving at a comprehensive agreement. Unfortunately, the circumstances surrounding a termination often make such an agreement very difficult. That said, business partners should consider including the mechanics of termination in the agreement that initially creates the relationship.

Because the termination process is part of the boilerplate of standard agreements, principals rarely spend time on this area. Their line of thinking is natural: *why discuss our business divorce before the marriage?* However, this is precisely when these matters should be resolved, since fairness will still be the order of the day.

Common questions when addressing termination include: When can the agreement be terminated?; What are the rights of each party during the termination process and beyond?; How will the rights

be established and who will do the same?; Where will control rest until the process is completed; What information will each party be entitled to along the way; and How will disputes be resolved, including the choice of forum and methodology?

Failure to contemplate these issues may require the dissolution to be resolved in court. When a deadlock exists as to the management of a company's affairs – or when there are less than 35 shareholders and corporate assets are being wasted or misapplied, or the directors are acting or expected to act in a manner that is illegal or fraudulent – a shareholder may move for judicially dissolution under Fla. Stat. Sec. 607.1430.

When appropriate, the court can protect shareholders by appointing a receiver, custodian, or provisional director. If the case proceeds, the court may dissolve the corporation, in which case the business's assets are used to pay debts and any surplus is proportionately distributed among shareholders.

Fla. Stat. Sec. 607.1436 also provides for an extraordinary alternative: the corporation or any one or more of its shareholders may formally elect to buy the shares of the complaining shareholder within 90 days of the petition's file date. The parties will then determine a share's fair market value on the day of the petition (values can be adjusted to eliminate the effect of the behavior that is complained of). If the parties cannot agree, the court can stay the dissolution proceeding, conduct a valuation trial, and set the value.

At this point, the court may set terms for purchase, including security, and provide for interest and installments. Expenses and costs may be awarded. If the corporation or the shareholders are not compelled to buy after the valuation trial, they have an option to file articles of dissolution, which effectively liquidate the corporation.

While this process can be expensive and time consuming, it is fair. The complex nature of dissolving a business underscores the importance of finalizing an agreement ahead of time – when the relationship is still warm and fuzzy. ¹

BY ANDREW C. HALL, ESQ.

Hall, Lamb and Hall, P.A.
Offices at Grand Bay Plaza, Penthouse One
2665 S. Bayshore Drive
Miami FL 33133
305-374-5030
www.hlhlawfirm.com

