Like a marriage, a new business partnership needs a 'pre-nup'

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When you begin a new business with a partner, no matter what the form of the business, you should have a "prenuptial agreement" for your business.

In a marriage, you cannot predict how long the relationship will continue and how it will end. The same is true in a business context. People do not know if their business partners will leave them for another business opportunity, have a problem that interferes with their ability to do their job, or retire or die while still in partnership.

Decide the basics
Because you cannot predict the future, it is important to have such an agreement in place once your new business is formed.

If you form a corporation, you will want a shareholder agreement. If you choose to form a limited liability company, you will want an operating agreement.

In either event, you will want to cover some basic principles in your documents. This is true no matter if your partner is your best friend, your sibling, your parent or otherwise. Many a friendship or family relationship has been tested by business problems or the money that flows through a business.

If the issues are discussed and resolved before the problem arises, the contract will control them.

Either agreement should indicate who will be running the business. Will there be the standard jobs such as president, vice president, secretary or treasurer, even if the business is a limited liability company? What will each job entail? Who has the power to terminate the relationship? What types of business decisions can be made by each officer of the business? Is there a limit on how much can be spent by an officer without authorization from the board or other members?

Money or sweat?
Who will contribute money or other property to the business, and what type of interest will they receive for their contribution?

There are times when you or your partner may have money or other assets to contribute to the business. There may be times where you have a partner with no money or assets who can only contribute sweat equity. In that event, you may choose to give that partner a nonvoting interest or choose a deferred compensation arrangement in lieu of an ownership position.

How will the profits or losses of the business be divided? This may be according to the percentages of contribution. It may also entail a preferred amount or a guaranteed amount paid to a particular partner before a division of the profits among all partners.

If the partner is to receive a salary, this should be set forth in a separate employment agreement to show the amount of the salary and how the salary can be increased where the partner is doing a great job, along with setting forth his or her duties as an employee.

If a partner leaves

Most of the time these agreements contain a transfer restriction that states the business has the first option to buy the interest of a departing partner at a price set forth in the contract.

In the event that the business does not exercise the option, or has insufficient assets to pay the price, there is usually a secondary option for the remaining shareholders or partners.

This option can occur when the partner dies or becomes disabled, retires, quits or is fired by the corporation's board of directors, or the majority of the members in the case of a limited liability company.

The price may be determined by an appraisal of the business or set by the board of directors or the members of the limited liability company.

The price may be simple, based on a complicated formula, or an offer that either party may be the buyer or seller.

How will payment be made, and for how long? That depends on what the parties decide. Many times the payments are coupled with life insurance, in the case of a partner's death, and other times, the payments are made over five years.

As you can tell, each agreement is particular to that specific business. There are numerous questions that need to be answered by the business owners so their attorneys can build an agreement that will work for the business, ensuring its long-term success and creating fewer problems for the remaining business owners.

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