

The Business Divorce INSTITUTE

From Prevention to Finalization



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1. Preface

There are millions upon millions of privately-owned businesses in the United States. Although many are owned and managed by a single owner, many are jointly-owned by two or more partners.

We believe that there is simply not enough guidance for business owners who choose to partner. The lack of support for business owners is what inspired us to write this book. Our goal is to provide a manual covering the entire process:

- starting with the decision to take in a partner,
- to how to create a good foundation for the partnership,
- what needs to be done year-after-year to ensure constructive communication and a healthy relationship, and finally,
- what to do if, despite your best intentions and years of hard work, you and your partner fall out of love with each other.

In addition there are strategies for repairing a damaged partnership, and, in the worst case scenario, how to separate from your partner and how to obtain a business divorce.

A note on terminology is in order: businesses today may be conducted through a variety of legal entities, including corporations, limited liability companies, limited partnerships, general partnerships, and limited liability partnerships. The terms used to describe owners of these entities range from “shareholder” to “member” to “partner”. For ease of reference, we use the term “partner” to include all of the varied ways in which we own legal entities. Also, to make it easier for the reader to follow along, we often speak of “you” and your partner. Although we adopted this convention for ease of understanding, we believe that almost all of this discussion applies with equal force to a partnership composed of 3, 4 or many partners.

We believe that there is simply not enough guidance for business owners who choose to partner.

2. Introduction

Are you considering taking on a business partner and do you want to make good decisions?

Do you already have a business partnership and you can't wait to see it break up?

The Business Divorce Institute works with business partners who have both those concerns.

We support business partners and partnerships in 4 ways:

Divorce Prevention

1. Start a partnership with a good solid foundation and for the right reasons.
2. Maintain, adapt and grow the relationship according to the changing needs of the business and the partners

Divorce Finalization

3. Choose one of five ways to structure the breakup.
4. Use litigation if necessary to get the job done

We are business communication experts and business lawyers. We facilitate partner conversations and decision making, create legal documents, and find creative ways to break up partnerships should that become necessary or desirable. Often we discover ways to unravel partnerships no one else has been able to unravel.



3. Who Are You?

- Are you a business owner?
- Do you have a partner who is giving you problems?
- Not keeping up with his or her fair share of the work?
- Always complaining?
- Taking too much money out of the business?
- Getting sidetracked by other things?
- Are you and your partner in a new business venture and you want to start off with an agreement that protects you both (like a pre-nup), and with an annual plan to stay in good communication?
- Are you and your partner not speaking? You've been in business together for a long time. The relationship went south years ago and you want out and he or she doesn't even want to address it.
- Are you a spouse of a person in a business partnership? You see the stress your spouse is dealing with, how he or she brings it home every night. You see how it's impacting him/her, yourself and your family.
- Are you the child or grandchild of a founding partner who is dealing with power and transition issues?

4. What's In This eBook?

On the following page is a flowchart and decision tree that encompasses the 4 areas within the Divorce Prevention and Divorce Finalization spectrum. Following that you'll find a table of contents for each area of the chart. If you're the kind of reader that wants to read the case studies first, here are two real world scenarios (you will find more at the end under More Real World Scenarios.)

5. Real World Scenarios

The Tech Startup

Situation: A and B became partners in a new tech startup because they wanted to create a business. They shared a vision for a solution that could be used to solve a particular problem. They also heard from venture capitalists and other tech strategists that partnering was encouraged. A was very numbers oriented, progress was measured by stats, views per page, pay per click. His view of their strategic planning was data driven. B was more people oriented, focused on the customer experience, customer service, having non-web strategies to support the business outcome. Not only did these two orientations affect business strategy, it effected how they worked together. B took some time off to handle family issues and A resented it because he would not have made the same choice.

Action: A and B hired Jeri to work out their differences. Jeri coached them to rediscover why they had chosen each other in the first place, and helped them reestablish trust, empathy and likability. Then in that space of using the prefrontal cortex, Jeri debriefed assessments so they could objectively look at their similarities and differences. They then looked at options for moving forward, dividing duties, growing different parts of the company, using scarce resources in various ways.

Results: A and B decided to break up their partnership. They continued as friends respecting each other's different points of view. They came to the conclusion that, as a startup, they couldn't work together when they each wanted to follow such different strategies to grow the company. And the resources weren't present to do both simultaneously.

Brotherly Conflict

Situation: A and B are brothers in a business that they inherited from their father. They are both in their fifties, so they've been running this business for a long time. A's division is profitable. B's division is losing money. B will not allow his division to be shut down. It's dragging the company down and creating anger and frustration between the brothers. A feels powerless to shut down the losing division. Meanwhile A has two children in the business and is seeking to keep its value so he can pass on his share of a profitable business to his children. And because it's a family business, spouses are involved as well.

Action: The case required extensive litigation (including a failed mediation) in order to convince partner B that something would need to change. A proposed to buy out his brother. His brother held out for more money. They couldn't agree on a 50/50 buyout amount because they couldn't agree on the valuation of the business.

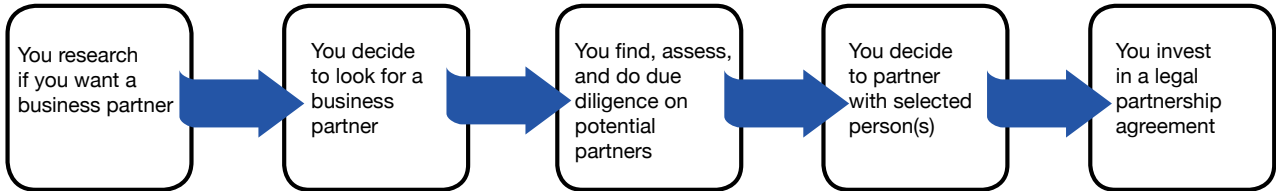
Results: The case settled before it actually went to trial. Since the brothers couldn't agree on the valuation of the company, the business divorce attorneys advised the brothers to put the company up for sale. A third party bought the company for 200% of what the brothers initially thought the company was worth. They split that, the case was settled, and everyone was happy.



6. Flow Chart

The Lifecycle of a Business Partnership

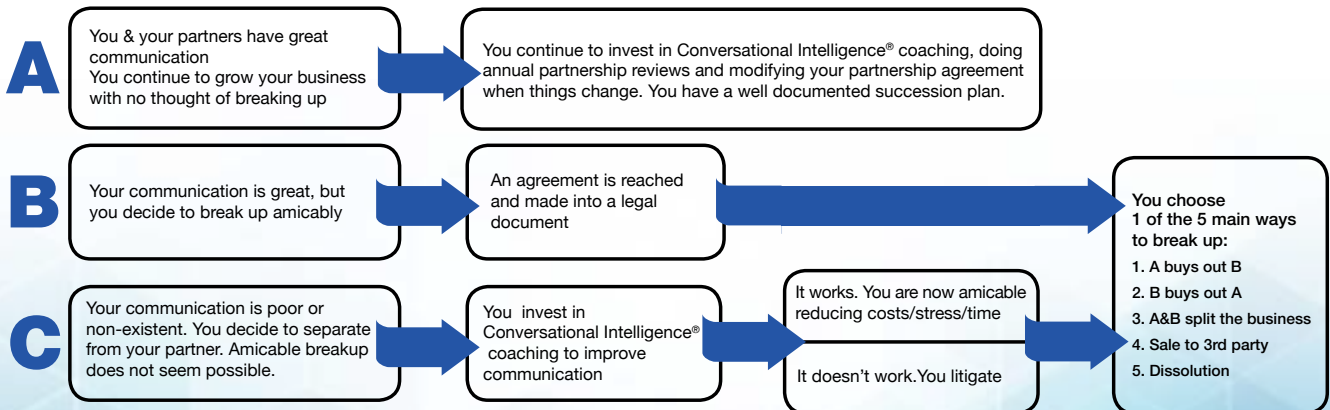
THE BEGINNING



THE MIDDLE (Many Years)



POSSIBLE SCENARIOS for the End



7. Divorce Prevention

Should I Take On A Partner?

When a client contacts Richard Lambert and says: “I have decided to take on a partner. Can you draw up the paperwork?”, Richard’s first question is: “Why have you decided that you need to take on a partner? What does your prospective partner bring to the table? Can you bring that element to the business on your own without a partner?”

After working with thousands of business owners, you learn that it is as easy as a handshake to get into a partnership, but it can be very painful/time-consuming – and expensive – to get out of one.

Sometimes, when Richard questions the need for a partner, the business owner comes to the conclusion that he or she does not need a partner after all. On other occasions, the business owner’s urge to partner is well-founded for a variety of reasons, including:

1. There is a need for financing that the business owner cannot provide on his or her own.
2. The business is complicated enough that one person cannot adequately handle all the required tasks, and a partner will be more incentivized to put in the long hours than an employee.
3. Special contributions of technology, skill sets, connections or intellectual property are required and cannot easily be obtained without granting equity to a partner.
4. Finally, there is the psychological comfort that comes from knowing that “two heads are better than one”.

The counseling point: Do not take lightly the decision to partner!!

What Makes A Good Business Partner?

How Can We Make Sure We’re A Good Long Term Fit?

Research has shown that it’s not the more concrete aspects (initial idea, time, money, skill set, intellectual property, connections) that each partner brings to the table that creates success. The hope and glow of new business ownership wears off after a while and these factors vary over time. What makes a partnership sustainable over the long haul are the personal factors, the ‘people skills’ of communication, trust, respect, emotional intelligence, expressed expectations, and caring. These yield the ability to discuss all the variances, dissatisfaction and friction openly and work out mutually agreeable solutions.

Sharon A. Horowitz, PhD, of Center North (*Advisory Services For Technology and IT Leaders*) researched this for her article, **“It Takes Two to Tango, The Perils and Possibilities of Entrepreneurial Partnerships.”** She interviewed successful and unsuccessful partners. We’ve taken the liberty of summarizing her most important concepts and expanding them with our own thoughts and recommendations.



“Our most important finding was that despite the existence of an operating agreement which addresses decision-making, equity and other critical issues, the interpersonal and emotional dynamics that unfold between partners were the trickiest to manage and master. Even when the business is a financial success, psychological issues of competitiveness, control, and counter-dependency can derail the partnership at any time.”

(Sharon A. Horowitz, PhD)

16 Questions

Here are the factors to consider and questions to ask that will make a difference:

- 1.** Really understand the motivations and competencies of your partner candidate. How do they complement your own? Invest in decision-making, behavioral and motivational assessments for both of you so you get some objective data. Don't rely on "We're friends" or "We came up with this cool idea together" as enough justification for what might be a very costly and close relationship.
- 2.** Do you really want to go in business with a friend? If the business breaks up, the friendship will not last.
- 3.** How did the idea for this business develop? Together you brainstormed it, wrote it on a napkin, now you're in a partnership to bring it to life. Is it a good idea to be partners based solely on this? No. There will be lots more work together to make it into a business. A true business partner is reliable and trustworthy, not just a good idea generator.
- 4.** Make sure neither you nor your partner candidate are jumping into a partnership just because you're in transition or lost your corporate job or you're unhappy in your work. Be careful that you're moving toward a partnership because it has mutual value, not because you're running away from something else.
- 5.** Make sure your partner candidate has the same emotional investment as you do. If you're highly committed to the business' success and your partner isn't, there will be friction every day that you work harder than she does, especially if you're setting it up as a 50-50 split. Make the split indicative of all of the commitments, including time, financial, emotional, intellectual property or any other. Be prepared, as these may change as you re-evaluate your partnership each year.
- 6.** What are the hidden assumptions? Does one partner think she's more valuable? That her experience makes her judgment better and entitles her to make most of the decisions? What unique value does each partner assume she's contributing?

Make sure your partner candidate has the same emotional investment as you do.

- 7.** Be true to yourself. Be honest with yourself why you want to form a partnership. Really know yourself and what you bring to the table. Ask others for their objectivity and invest in objective assessments. What are your motivators, your preferred communication styles, your decision making styles? Where are you strong? Where are you limited? Will your prospective partner offset the areas where you're limited, and will you offset his limitations?



8. Get clarity around your company's decision making process. Is there discussion? What resources are called on? Who makes the final decision? Determine the hierarchy up front to avoid negative resentments that might develop later without this clarity.

If two partners come from their separate businesses and decide to merge, there is an adjustment for the person who does not become the final decision maker. Good communication can guarantee buy in and reduce friction. Is there agreement not to sabotage the final decision? At the end of the day, the optimal results come from everyone getting behind and executing the final decision.

9. You and your partner candidate should have about the same net worth and risk tolerance. If one is willing to bet everything and the other is not, or if one is financially independent and the other is not, it may lead to serious arguments.

10. Live together before making it an official partnership. Can you do a project together? Can you share a workspace? Can you get a sense of each other's day-to-day working habits before declaring it an official partnership? Do you amicably resolve issues and difference of opinions that come up? Even if you agree on all the legal things written into a partnership agreement, you may still drive each other crazy or, alternatively, really enjoy each other's working style. By seeing and experiencing each other in action, you'll have a better foundation for making a decision about partnering.

11. Keep personal relationships and business partnership separate. Mixing too much social, or even romantic, issues with your business relationship can create entanglements, hurt feelings, power plays, and a host of other complications that spill over into how the business functions.

12. Do you respect your potential partner? Is each partner strong and successful in her own right? Does each person really listen to and take into consideration the thoughts of the other? Is there admiration for each other's abilities and competencies? If so, disagreements are more likely to be creative rather than destructive. Are you willing to back off, even if you disagree, if it's really important to the other person?

13. Do you and your prospective partner value communication? Do you agree to communicate regularly (at least weekly)? Your success will depend on your regular communication about all aspects of your business and your relationship? There will be inevitable ups and downs. Is your potential partner someone who will engage in feedback conversations? And be honest about their reactions? You don't want underlying tensions to swell under the surface to the point where they become disruptive.

14. Do you and your partner candidate share the same vision? Initially you may have the same vision to provide a product or service toward a certain objective. And that may change in terms of new products, new audiences, new strategies. Are you both in agreement that you will discuss this regularly as the business grows and adapts?

15. Be clear about roles. What role will each of you play? Written job descriptions help to clarify. Don't assume the roles you start with will be the same forever. Are you both willing to be in communication when you desire to change roles, when you see gaps, when holding each other accountable for performance, when appreciation is earned?

16. Do you and your potential partner agree that outside help can be valuable? Do you both agree to take others peoples' suggestions seriously? Whether it includes forming an outside board of



advisors, joining a peer advisory group, bringing in a coach or consultant or all those options, it's good for the sustainability of the business only if both partners are on board. Partners can 'drink their own Kool Aid' and have limited vision. Using someone from the outside can bring in objectivity and fresh thinking.

Here are two other exercises that can help you and your potential partner determine if you're a good fit.

The Values Exercise

The values or guidelines for how the company operates will stay pretty much the same. These values and how they are implemented need to be shared between all the partners. Business values (examples: integrity, respect, customer service, learning organization, fun in the work place, etc.) reflect the values of the owners and are used to create policies for hiring, firing, customer acquisition and retention, product/service fulfillment, culture creation, accounting policies, etc. If the partners can't agree, it creates mayhem. A good exercise is for you and your prospective partner to identify 4-7 values, and write down what behaviors reflect that value, what behaviors violate that value, and what actions will you as a management team take if there are violations. You'll become very clear if you can lead a company jointly from the same set of values



Communication Assessment

Throughout this chapter we've shown that communication is the most important factor in having an ongoing successful business partnership. So it would pay to really observe your potential partners' communications patterns, not only with you but with all others as well. Listen to your prospective partner. How does she talk about others? Rate each factor on a scale of 1 (low) to 10 (high). Do this with a few people to get a baseline and then do it as you observe your potential partner.

- Does she blame others and 'make it their fault', or does she take personal responsibility?
- Is he resigned to having little impact on his environment and, therefore, being a manager of circumstances, or does he talk and act like a creator who makes things happen and shapes himself and the world he creates?
- Does your prospective partner find out what triggers another person and then 'pushes that button,' or show genuine caring and respect with no sense of manipulation?
- Does she withdraw and keep her opinions inside and then harbor resentment, or does she clearly state her opinion, get things off her chest, and move on?
- Is he open and willing to listen and consider another's point of view, or is he addicted to being right and there is no other way but his way?
- Does she get defensive and self-protective whenever someone gives feedback, always jumping to the negative and forcing others to 'walk on eggshells' around her, or does she accept all feedback with how she can benefit from it, welcoming feedback openly and objectively?
- Is he controlling and a perfectionist about each detail, not trusting others to do it as perfectly as he can, or is he more interested in progress rather than perfection, in delegating to others, in entrusting others to potentially bring more value than he can provide.

- Does she have a tendency to ignore other people, get so focused on tasks that people aren't important, or is she working at improving relationships, listening to connect with people, seeking to understand them and be understood?

People have a framework for how they think and behave. Astute observers can look at someone's interaction with another person and extrapolate that that is the behavior they may soon see directed at themselves. However you see them interact with others is how they'll interact with you after the initial honeymoon. Choose wisely.

Over and above the more tangible advantages that a potential business partner may bring into your business venture, you now have 16 questions and two exercises that you can do to assess if the person you are considering has the intangible advantages that would make him or her a good long term partner.

One point to remember

If someone who you're thinking about as a partner because of the tangible things they can contribute doesn't meet these intangible criteria at the level that you would prefer as a business partner, you can always do a short term non-equity project with them, or employ them. You can give them a piece of the profit on one project rather than making them an equity long term partner in your whole business. There are alternatives. You get to say and you get to create your own boundaries.

I Have Decided To Partner. Now What Do I Do?

The first thing you should do is place your partnership on a solid foundation, that is, choose an entity that is suitable for your business.

There are four principal alternatives for a business with two or more owners:

1. The general partnership (or its close cousin, the limited liability partnership);
2. A regular, or "C" corporation;
3. An "S" corporation; or
4. A limited liability company.

See Richard's white paper on [Legal Aspects of Starting and Running a Small Business](#) for a detailed discussion. But suffice it to say that, for liability and tax reasons, the overwhelming favorites, in most situations, are the limited liability company or the S corporation.

Regardless of which form of entity you choose, the next step is to have a good Shareholder's Agreement, in the case of a corporation, or an Operating Agreement, in the case of a limited liability company. For reasons of haste, or perceived expense, or unfamiliarity with the need for such a document, some business owners skip this step. What a mistake!

By investing the time and money up front to create a good Shareholder's Agreement or Operating Agreement, the future partners are able to address important business matters at a time when the sun is out, the sky is blue, and there is little or no emotional baggage weighing on the relationship.

You don't have to partner. There are alternatives.

You get to say and you get to create your own boundaries. For instance:

- *Short term non-equity project*
- *Employment*
- *Piece of the profit*



Some of the most important matters include:

1. The allocation of shares between or among the partners.
2. Regular capital contributions, and future capital contributions, including contributions of intellectual property rights.
3. Management of the entity, both day-to-day and with respect to “key decisions”.
4. Officer titles and responsibilities.
5. Distributions of profits (including whether or not reserves or a “rainy day fund” should be set aside).
6. Employment responsibilities and compensation.
7. Buy-Sell provisions on death, disability, termination of employment and retirement, including the all-important issues of how the entity will be valued, and how the buy-out will be structured.
8. Non-Competition, Non-Solicitation and Non-Disclosure provisions.
9. Dispute Resolution Provisions, including progressive steps such as good faith negotiation, followed by mediation, followed by arbitration or litigation.

In this writer's experience, the exercise of thinking about these important subjects and discussing them with your future partner can draw the partners close together at the outset of the venture. In addition, the art of creating a well-designed architecture for your partnership is satisfying in and of itself.

What If We've Been In Business For Years And We've Never Had A Partnership Agreement?

If you're still working well together, congratulations. You're among the lucky few that have put your partnership above all the ups and downs that life and business have given you. It may not always be that way. There may be a real curve ball around the corner. You've played with fire long enough. For the sake of your business, your clients and employees, you and your partner, and your family and your partner's family, it's time to put that partnership agreement into place. It protects everyone and gets real clarity about what to do if something unexpected happens: illness, death, accident, business sale, business growth, business closure, as well as retirement or just plain changing your mind about how you want to spend your time. This is the best time to get the partnership agreement done, while everything is going well and you both can be objective.

If you and your business partner are having problems, you may be feeling that each of you has an agenda to get as much out for yourself as possible. And spouses or family may be pushing that agenda also. There's pressure, anxiety and fear of being taken advantage of. Because you don't have a partnership agreement, you don't know how you're protected, how to handle the risk, what leg you have to stand on. You may feel the chaos as overwhelming. Your family is experiencing this with you because they have no certainty about anything either.

If there was no partnership agreement and one partner dies, the deceased family now owns something they may not want to own and the surviving partner is left with a family who he may not want as business partners.

Good communication skills come into play here. Before you start planning how to break up the partnership, or resolve issues resulting from a deceased partner or any other possible scenario, it works to check how your brain is working. If you are focused on the negative self-talk in your head, you will stay in a negative mindset and not construct positive solutions. This is called an **amygdala hijack**. The fear based part of the brain, the earliest reptilian part of the brain, takes over to protect and defend you. However, our brains have subsequently evolved prefrontal cortexes that can go beyond the amygdala into rational and visionary thinking, trust and empathy, good judgment and planning. You'll read more about this in a later chapter.

How does good communication help you? If you and your partner sit down with a Conversational Intelligence® facilitator who helps you stay in your prefrontal cortex, share common meaning, exercise good judgment and objective thinking, and communicate using the tools you'll soon read about, you can create a win-win co-creational environment where you can achieve amicable solutions.

You may agree to create a partnership agreement and stay partners. Alternatively, you may agree to split up but without the anxiety and stress you were feeling earlier. You and your lawyers will achieve results much more quickly.



The Annual Review: How Can We Keep Our Business And Our Communication Growing?

Ok, so now you have a business partner agreement. It's an outline, a very necessary outline, one that you've both agreed on, but an outline just the same. You can make it work for you by growing your communication as you build the business within that outline.

We'll get into some ways in which your communication can be very effective. But first let's set some context.

Life Happens and We Are Emotional Beings

One of you starts a family or has to take care of an aging family. So your time availability changes.

Someone gets sick or becomes debilitated, and becomes less available to the business.

You both start out with a lot of energy, but one of you gets distracted by another business opportunity that seems more lucrative or captures your passion.

One of you develops a pressing need for cash and wants to get paid more out of the business. Or perhaps, you just take it without squaring it away with your partner.

One of you starts to feel that you're doing all the work and your partner isn't contributing a fair share of time and effort, especially if one person is bringing in all the high paying clients.

Someone feels taken advantage of, feels bullied, feels like the other is making them wrong all the time.

Another feels that all he hears are complaints and negativity.

All it takes is something small that ticks you off, you don't say anything and it doesn't get resolved. Then everything else that's said is tinged with this anger and resentment and it grows and grows triggering anger and resentment from the other person.

Perhaps the business is not doing very well, money is scarce and there is a fear of loss of income. You're now competing for what little there is.

Perhaps the business is doing very well and you feel you should get a bigger piece of the pie because your efforts were responsible. The other partner feels you're getting greedy.

Perhaps one of the partners is going through a divorce and the business is part of the settlement.



What's the Impact of These Kinds of Scenarios If Left Unresolved?

Your stress levels go sky high. You feel like you're walking on a tight rope. Your blood pressure is up. Your productivity is down.

Your employees see what's going on and feel the lack of leadership. Their productivity goes down. They may be getting different messages from each partner and they are left with uncertainty creating stress for them as well. Your people may take jobs elsewhere.

As much as you try not to, you can't help but bring your problems home with you affecting your spouse and children. They see you're not happy. You're preoccupied and not fully available to them to be part of their lives in a high quality way.

Your health is negatively impacted; for instance, inability to sleep, compromised immune system, sickness, injuries, weight gain or loss, etc.

Business revenues are impacted. If you, your partner and all your employees were working within a highly supportive, nurturing and fun environment, everyone's creativity and productivity would be leading the company to new heights. Instead the business is maintaining, making minimal progress or even going downhill.

If you are looking at your business as a big chunk of your retirement or for putting your kids through college, then these goals are being negatively affected as well.

There is a lot riding on whether or not you and your partner communicate effectively. Handling all the life incidents that happens, all the feelings that might come up, all the ups and downs of the economy and your industry, is something that needs to be addressed regularly so that issues get resolved, decisions get made, each of you get your needs met.



The Annual Review

We recommend an Annual Review of your partnership. You may have discussions a number of times throughout the year and that would be optimal. But, at least annually, we recommend you take a reading of your business partnership thermometer, a 'State of the Partnership' assessment.

You and your partner schedule a separate meeting prior to starting your strategic planning for the next year. You discuss the points in your partnership agreement, if anything needs to be changed, the issues that contribute to determining those points and what may change for next year. You might want to have it facilitated by a professional facilitator/coach/consultant so everyone's considerations are put on the table.

Here are some questions that would be included:

- Are we both putting in the same amount of time and effort to grow the business?
- Are we both investing the same financial or other resources into the business?
- Are we both taking equal amounts of money/perks/benefits out of the business?
- Are we both still happy with our arrangement?
- Do we both enjoy the roles we're each playing in the business?
- As we go through next year's planning process, what might change about the roles we play? (considering growth goals, restructuring goals, etc.)
- What do we each have going on in our lives that impacted the business last year?
- What do we anticipate will be going on in our lives in the coming year that might impact the business and each other?
- How do we plan for our personal monetary needs as our lives change? How can our business planning provide for that?

It may be that you both decide together to make changes to your original partner agreement based

...at least annually, we recommend you take a reading of your business partnership thermometer, a 'State of the Partnership' assessment.

on the discussion around these questions. For instance, if your arrangement had been 50-50 in terms of allocation of shares, you might change it to 40-60 because a partner wants to bring more focus to a second venture or wants to spend less time in the business.

You may decide to change the decision making hierarchy for a certain branch of the business where a partner has developed a new territory. It's great to get this specified and out in the open. All too often assumptions get made and not agreed upon by the other partner leading to later angry confrontations and confused employees.

Documenting changing roles creates clarification and understanding. It helps both the partners and employees to work effectively.

Distribution of profits or compensation can be handled with clear communication and advanced planning. For instance, if one partner has children in college, his need for additional distributions/compensation can be stated up front so both partners can create an arrangement that meets each partner's needs fairly.

Don't be afraid to modify the agreement every year if new situations arise. In fact, forward thinking partners build into their partnership agreement that they will have an annual partnership review, precisely so necessary changes can be made to accommodate changed circumstances.

Making Communication Effective

And so you say. 'Hey, those are some tough questions. Especially if I want to change something and I sense my partner doesn't want anything to change.'

You would be very right; especially if you haven't fostered good communication all year and then you want to handle some heavy stuff at your **Annual Partnership Review**.

According to The CreatingWE® Institute¹, "Good communication is like a muscle. You have to exercise it and if done regularly it grows stronger with time. Open, transparent, and trusting conversations are the best muscle you can exercise – and when you do, you elevate your Conversational Intelligence® with others." Your conversational muscles grow stronger because good conversations are based on trust and grow new levels of trust the more you exercise them. If you and your partner have been reliable, transparent, respectful and caring with one another all year long, you've created a foundation of trust that will show up in the Annual Review and will be a continuous gift to your business and your employees.

The growing field of neuroscience, especially applying the Conversational Intelligence® research - made possible by using MRI technology, has created some hard data behind the soft skill of conversations. The brain has been identified as having multiple parts, each with its own functions. We talk about conversations as skills we want to master. Knowing it's backed up by science gives extra credibility and intentionality to the process



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Two parts of the brain I'll address are the amygdala and the prefrontal cortex.

The amygdala sits inside of the Limbic Brain, which is located in the middle of our brain. The Amygdala is also connected to the Primitive brain. This brain is located at the back of the head just above the spinal cord, and is often called the Reptilian Brain because it was the earliest part of the brain to develop in man. Its job is to keep us safe so we survive. It protects and defends us; sets up flight, fight and freeze responses.

When we're in danger, the Reptilian Brain and the Amygdala work together to shut down the rest of the brain – and this is what is called the Amygdala Hijack.

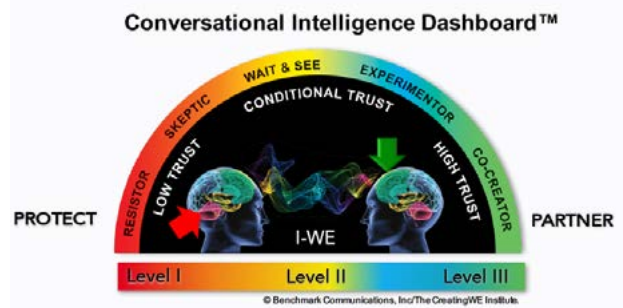
¹ CreatingWE Institute (A division of Benchmark Communications, Inc.)

² Conversational Intelligence, How Great Leaders' Build Trust and Get Extraordinary Results

What does it perceive as danger? Well, danger used to be being chased by woolly mammoths. Now danger can be a negative comment, being ignored, being challenged by a colleague in a meeting, a perceived threat to your ego whether or not it's real or intended, a perceived threat to your safety whether or not it's in your immediate environment, a perceived future threat to your income. The amygdala is the seat of fear. It's all about protecting me as an individual.

The Prefrontal Cortex is at the front of the brain behind the forehead. It is the most recent and most advanced part of the brain, often called the Executive Brain. It provides us mastery over higher functions such as: the ability to envision the future, the ability to create 'what-if' scenarios, and empathy so we can step into another person's shoes. It allows us to make judgments in difficult situations. It understands integrity. It allows us to live in trust connecting and sharing with others. One of its features are Mirror Neurons. Mirror Neurons sense how another person is feeling and mirror that in our own selves. We can also influence others by being in a positive state so that their mirror neurons take on our state. The Prefrontal Cortex is an observer. It can say 'I'm having an emotion' without being entirely taken over by that emotion. It can recognize when the amygdala is in fear and wants to shut the rest of the brain down. It can use its judgment function and say this perceived threat really isn't a threat. So I'm going to react not out of fear, but with humor or compassion or detailed analysis. Since it is the seat of trust and compassion, it is all about connecting with others.

Good conversations are about growing the ability to stay in the Prefrontal Cortex and develop relationships and conversations with others built upon the inherent abilities of the prefrontal cortex to help us connect, navigate and grow with others. That means reframing perceived threats as unthreatening so the amygdala is not activated. Easily said, not so easy to accomplish.



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Conversational Intelligence® (C-IQ) tools are the tools we use to give clarity and build better conversational skills with others.

C-IQ Tool #1. A Conversational Dashboard™, that measures trust identifying when we're moving up the trust continuum from Resistor to Skeptic to Wait & See to 'ExperiMentor' to Co-creator. At each stage more trust is present. At the co-creator level, partners are exploring and creating together. By identifying which stage we are at, we objectify and quantify something that used to be amorphous. We own it and feel we have more understanding of it.

The Resistor is acting in self-protection and defensive mode. "I want to influence you to my point of view. I may not be open to yours."

The Skeptic is still doubtful but is no longer totally resistant. "I want to learn more from you but..."

The Wait & See is starting to feel more comfortable and is opening up to a possibility. He wants to belong. "I'm uncertain, am I valued and accepted?"

The ExperiMentor desires to experiment. "How can we share and discover our best current thinking?" They mentor each other in discovery.

The Co-creator builds new meaning together. "How can we create new possibilities together?"

If you are creating healthy conversations with your partner, you are constantly assessing what part of the Conversational Dashboard your conversation is in and how to move it forward to Co-creation. Co-creation is where flow of ideas, positive feeling and innovation come from. Put yourself in that state and your partner's mirror neurons will pick it up. How do you do that? See #2.

C-IQ Tool #2. 3 Levels of Conversation You can move your conversations to co-creator level by understanding the three levels of conversation and then focusing on developing Level III Conversations.

Level I is Transactional Conversations which are about confirming what we already know. When healthy, it helps people connect and confirm what they know. When it's not healthy it informs others we are not open to influence. When overused it becomes a syndrome called "tell-yell-sell." It focuses on me and what I know. I'm protecting my ego.

Level II is Positional Conversations and are about persuading others and influencing them to my point of view. If I use it in a healthy way, I enable better understanding of others' points of view and may be more open to influence. If I overuse this, I am 'addicted to being right.' When I listen to others, it's to accept or reject what they have to say. Trust is conditional. If I like what I hear, I'll trust you.

Level III is Transformational Conversations, and is about sharing and discovering. We're exploring each other's perspectives, open to each other's influence and co-creating something totally new. We're focused on our mutual success. We listen to connect. We ask questions for which we don't have answers.

Once we all know what a Level III Conversation is, we can use this in our business meetings. "I'd like to introduce a new product. Here's a little about what I have in mind. Let's have a Level III Conversation about it." It encourages people to brainstorm and throw new ideas into the mix, ask questions, and listen to each other, co-creating new solutions.

C-IQ Tool #3. Listening to Connect, Not Judge or Reject. When you listen to really understand another's view of the world, you put yourself in that person's shoes, and you use your Prefrontal Cortex and Mirror Neurons to grasp the understanding and intention of the other person. You are then listening to connect. However, if you're half listening while you are planning what you're going to say next, or if you're distracted by your cell phone, or if something else is on your mind, then the other person will feel your lack of focus and will not feel that connection. Trust is not present.

C-IQ Tool #4. Ask Questions For Which You Have No Answers. If you really want to discover what's inside the other person, then you ask open questions that are intended to find out their answers, not answers that you think you already know. It's important that you truly have an open mind without your own agenda. Here are some examples:

- What's on your mind?
- What's your perspective on this?
- How do you think we should handle this?
- How can we make it work for everyone?
- What's next?
- What do you think would make a difference here?
- How would you like to see the business grow?

C-IQ Tool #5. Double-Clicking Most of the time we think people have the same meanings for words that we have. Usually they have different associations and we often have different contexts in mind than theirs. It pays to ask people to Double-Click on a word or concept. Double-clicking, like we do with a computer mouse, goes deeper into what people mean. Double-click on the word 'leadership' or 'success' and you'll find many different meanings. It pays to find out just what people mean so you can come to a shared meaning.

There are many other tools and lots more biology that supports the functionality of these tools. A Conversational Intelligence® Coach can support you and your partner in generating good communication that preserves the integrity and success of your partnership.

A Conversational Intelligence® Coach can also facilitate your annual partnership review to foster Level III Conversations that co-create and prevent amygdala hijacks.

Additional note: If you and your partner enjoy the enhanced communication, you might want to bring it to all your employees to encourage Level III Co-creation throughout your entire company.

8. Divorce Process

We wish that every partnership was a good and lasting one having a great partnership agreement, many annual reviews and a growing communication awareness between the partners. Unfortunately, many partnerships are in trouble. Or were formed before the arrival or implementation of this ebook. Or the partners just want to move on. Hence the need to think about business divorce and how to finalize it once you've made the decision to separate.

Shall We Break Up?

There are a couple of different scenarios for the end of a partnership:

- Your communication with your partner is fine, but you mutually agree to split up amicably.
- Your communication is poor or non-existent. You decide to separate from your partner. An amicable break-up does not seem possible.

Let's explore each of these scenarios:

1. You Agree to an Amicable Break-Up. This is clearly the optimum solution. If you can mutually agree to split up and keep it amicable, you will save money and spare yourself the emotional aggravation of a contentious split-up. However, even in an amicable split-up, you will need to enlist the services of an attorney to prepare a written agreement setting forth the important business and legal terms.

2. You Agree to Split-Up, But an Amicable Separation Does Not Appear Possible. You should consider an investment in a Conversational Intelligence® Coach. If successful, this coaching may re-establish communication between you and your partner to the point where you are able to amicably resolve your separation. If, despite your best efforts in conversational intelligence coaching, you are unable to amicably resolve your differences, then the time has come to consider the litigation option.

See **“When Should I Consider Litigation as a Means of Resolving My Partnership Dispute”?**

If We Decide To Split Up, What Can I Expect To Happen?



First and foremost, you can expect **resolution** of your partnership dispute. Beyond that, your expectations should be shaped by **how** you split up.

If you split up amicably, you will need the professional assistance of a skilled business divorce attorney to help with the structuring, negotiating, documenting and closing of the break-up. You should also expect that your partner will have his or her own attorney.

In addition to the business divorce attorney, you will likely need the assistance of a business valuation expert. Whether you are buying out your partner, or your partner is buying you out, how will you know the price at which you should buy or sell without expert assistance?

You may also wish to consult with your financial advisor or personal accountant to understand which of the available solutions would be better for you and your family in light of your individual financial and tax circumstances.

If your split-up requires litigation, you must understand that litigation is a **process**. Litigation takes on a life of its own, with its own timetable, driven by the rules of civil procedure and the uncertainties of court calendars. Don't be afraid to make your attorney explain everything to you. It's your case!

If there is one piece of advice that we would give to anyone involved in the litigation of a partnership dispute, it is this: Be prepared for the ups and downs of litigation. It is a roller coaster ride.

As with an amicable resolution, you should expect to work with a business divorce attorney. Depending on the state in which your business is formed, your business divorce attorney may need to partner with a lawyer in your state.

You should also expect to need the services of a business valuation expert, and if there are allegations of financial misappropriation or other wrongdoing, you may require the services of a forensic accountant.

Finally, if you decide to split up with your partner, and you follow the path laid out in this ebook, you can expect a resolution of your dispute, and a brighter future.

Change of Control

If ownership in your business changes, you will want to look at all the fine print in the agreements your company has with those named below to see who you have to notify or get approval from.

Some may want to see that the new owner(s) is (are) financially viable.

- Banker
- Landlord
- Mortgage holder
- Automobile Lessors
- Issuers of permits and licenses
- Product lines you represent
- Vendors
- Joint venture partners
- Investors
- Unions
- Credit Card issuers
- Liability insurance
- Key person insurance



What Form Should Our Break-Up Take?

You have decided that you cannot or will not live anymore in a broken business partnership. Maybe your partner agrees that it is time for the two of you to separate.

The next question is: How do we go about separating? What form should our break-up take?

There are basically five ways that two partners can legally effectuate a breakup:

1. You buy out your partner;
2. Your partner buys you out;
3. You “split up” the business, meaning that each of you takes a portion of the business, usually with some financial adjustment or “settle-up”, since the two portions are rarely of equal value;
4. A sale of the business by both partners to a third party; and
5. Dissolution and liquidation of the company.

Although there can be variations on each theme (for example, a sale of a segment or division of the company to a third party, followed by your buy-out of your partner’s interest in the company), most business break-ups follow one of these five tracks.

Let’s examine each one in further detail.

You Buy Out Your Partner. In most business divorce cases involving two partners there is a “natural buyer” and a “natural seller.” The natural buyer is the partner who is better suited, better positioned to be the buyer. Maybe the natural buyer founded the business and has been the driving force all along. Maybe the natural buyer still has the enthusiasm for the business and a plan for taking the business to the next level. The natural buyer may be the one with the financial resources to do the deal.

Let’s assume that you are the natural buyer, what do you need to consider in making an offer to buy out your partner?

Have you done a valuation? Do you really know what the business is worth? You could obtain a private valuation that is not shared with your partner and that is used solely for purposes of helping you to come up with a buy-out proposal.

In addition to the purchase price, consider the payment terms. Most deals are done with a down payment, somewhere in the range of ten percent (10%) to twenty-five percent (25%), with the balance paid by delivery of a promissory note calling for payment of the balance, with interest, over a period of years.

Not all of the payments to your partner need be allocated to payment for capital stock or LLC membership interest. Consideration should be given to allocating a portion of the purchase price to tax-deductible dollars in the form of consulting compensation or a covenant not to compete.

The selling partner should be required to deliver a restrictive covenant agreement containing provisions for non-competition, non-solicitation of customers and employees, and non-disclosure and non-use of confidential information.

The selling partner should be required to resign as an officer and director of any corporation, manager of any LLC, and as a trustee of any pension and profit-sharing plans.

All of the deal terms need to be written down and made part of a comprehensive buy-out agreement.

Your Partner Buys You Out. If you are the “natural seller”, and your partner makes you a buy-out proposal that you find acceptable, what should you be looking to include in any transaction? Consider the following:

For any portion of the purchase price that is deferred, that is, payable over time, you should insist upon adequate collateral security. What constitutes “adequate collateral security” is entirely negotiable, but, from the seller’s perspective, it should consist of a package of protections that will insure, to the greatest extent possible, that you will actually get paid in the future.



Some examples of collateral security are:

- A personal guaranty of the buyer (and his or her spouse, if possible)
- A letter of credit from a bank or other financial institution
- A pledge of the capital stock or LLC membership interests sold to the buyer so that you can take back the business if the buyer defaults
- A mortgage on real estate owned by the buyer
- A security interest in and lien upon the assets of the company
- Life insurance on the life of the buyer, payable to you if the buyer dies before your deferred payments are paid in full
- A Consent Judgment on promissory note payments
- Any other assets of value that can be reduced to cash in order to pay off the deferred payments due from the buyer. In one case, a buyer granted a lien upon the buyer’s lottery winnings!

If the company may be sold in the near future, consider a look-back, which is an agreement by the buyer that, if the business is sold within a period of “x” months or years after you sell your shares to the buyer, then your partner will pay you some portion of the sales proceeds received by your partner in the third party sale, over and above the price paid to you in your sale to your partner.

Although not appropriate in every deal, perhaps the buyer should agree to place restrictions on the buyer’s operation of the business for so long as any portion of your purchase price remains unpaid. Some of the restrictions that might be placed on buyer’s operation of the business are the following:

- Restrictions on payments of dividends or distributions
- Restrictions on the payment of bonuses, except perhaps for bonuses in the normal course and consistent with past practices
- Restrictions on changes in capitalization
- Restrictions on mergers, acquisitions and sale of the company’s business
- Restrictions on borrowings
- Restrictions on capital expenditures and purchases of assets

As the seller waiting to receive a substantial portion of the purchase price through deferred payments, perhaps you should have the right to inspect the company's books and records. At a minimum, you should be entitled to receive financial statements.

Did the company or the buyer own any key-man or buy-sell life insurance on your life? If so, you may wish to purchase the life insurance if the terms are favorable or your health has changed and you would have trouble replacing the insurance on comparable terms.

Indemnification: You should request indemnification against all claims arising from your activity as an officer, director or shareholder of the company before the date you sell your shares.

In this day and age, continuation of benefits (or payment or reimbursement for lost benefits) should be considered.

Each deal is unique, so you should be represented by counsel experienced in transactions of this sort, who knows what else you should be asking for.

You Split Up the Business. In a split-up of the business, you and your partner each takes a portion of the business. The overall business would be valued and a value would be assigned to each separate portion of the business. Since the two portions are rarely of the same value, the partner receiving the higher-valued portion of the business would pay the other partner cash or other property to make up for the difference in value.

An example will suffice to illustrate how a split-up might work. Assume that you and your partner are 50-50 partners. You own a business which sells products at retail and at wholesale. The overall business is valued at \$6 million. Each of you should receive \$3 million in the split-up; however, the retail business is valued at \$4 million and the wholesale business is valued at \$2 million. You and your partner agree that you will take the wholesale business valued at \$2 million and your partner will take the retail business valued at \$4 million. In order to equalize for the difference in value, your partner pays you \$1 million in cash at the closing of the split-up.

It is not always possible to split up a business into two (or more) portions. In many cases, the business is simply one, unitary business that cannot be broken up into separate pieces, whether for operational, financial or legal reasons. In one case in which this writer was involved over 20 years ago, it certainly appeared to be the case that the business was not capable of being broken into two. It was a call center business with only one line of business and one list of customers. However, after studying the business more carefully, it became apparent that there was a "seam" in the business, and, it occurred to the writer that, perhaps if we tore along the "seam", we could give one portion of the business to Partner "A" and the other portion to Partner "B".

What was the "seam" in this apparently unitary business? Both Partner "A" and Partner "B" were strong salesmen, so each partner had been responsible for securing and maintaining relationships with a discrete set of customers. Perhaps Partner "A" could leave the partnership with his customers, and Partner "B" could stay behind with the customers who were loyal to him?

However, Partner "A" had a practical concern that he would lose some, even many, of his customers if he tried to take them to a competing call center. Somehow, the two partners had to split up without the fact of the split-up becoming apparent to the customers of Partner "A". But how to accomplish that?



It was decided that the company would continue to provide call center services both to customers of Partner “A” and Partner “B”. There would be a service agreement, with explicit service standards, between the company and Partner “A”.

Borrowing from the commercial finance arena, it was decided that a form of “notification financing” would be utilized. The customers of Partner “A” would be notified that henceforth all payments on account would be made to a lockbox controlled by the writer’s law firm. The parties agreed on a formula for sharing revenue so that each time a payment came in from a customer, “x” percent was distributed to Partner “A” for originating and providing customer service to the customer, and “y” percent was sent to Partner “B” for providing the call center services. The law firm received a small monthly fee for administering this arrangement.

This arrangement was very durable – it went on for 13 years. Both partners were able to resolve their partnership dispute with a minimum of rancor, and with their heads held high. Every business divorce should have such a happy ending!

The IRS has rules and regulations regarding so-called “divisive reorganizations” which allow certain transactions, including split-ups, to qualify for tax-free treatment. The rules are very technical, and not every split-up will qualify, but if the split-up can be structured in such a way that it qualifies for tax-free treatment, that is a “home run result”.

You and Your Partner Agree to Sell the Business to a Third Party. One way to effectuate a business divorce is for the two partners to agree to sell the business to a third party. This would seem to be an obvious solution where two partners are unable to get along. However obvious a sale of business may seem to an outsider, the option is not always available. One or both partners may not be ready to sell the entire business to a third party. The business may not be salable, or not salable within a time frame that would work for the partners. Alternatively, the business may have some measure of marketability, but would not be likely to fetch a suitable price.

In one case in which the writer was involved, there were two partners, Moe and Curly. Moe was the natural buyer and Curly was the natural seller. However, Moe and Curly could not agree on the value of the business. Curly thought that 100% of the business was worth \$12 million, but Moe thought that it was only worth \$10 million. Although the gap seemed bridgeable, both parties negotiated to an impasse and then dug in for what promised to be a bitter and expensive litigation.

Just when it looked like there was no immediate hope of a solution, the writer suggested that the partners explore the idea of hiring a mutually acceptable mergers and acquisitions adviser, and commissioning a non-binding business valuation to see what the business might fetch in the open market. The M&A advisory firm did its work and reported back that the company was in a “hot” industry that was drawing a lot of interest in the M&A marketplace. The M&A advisory firm advised that the business might be worth as much as \$18 million in a sale. Both partners acknowledged that they would be willing to sell at \$18 million or thereabouts, and gave the M&A advisory firm the green light to take them to market. What happened next was beyond everyone’s wildest imaginings.

Not only was the company in a “hot” industry, it was an above-average performer in a “hot” industry, positioning it for multiple purchase offers. The M&A advisory firm was able to orchestrate a limited auction, and the business ended up selling for \$24 million. Each of the two warring partners happily rode off into the sunset with a cool \$12 million.

It may not make sense in every situation, but when it does, a sale of the business to a third party may turn out to be the most financially lucrative solution for partners who can’t get along.



The Business is Dissolving. Of the five ways that partners can legally effectuate a breakup, dissolution is both the last option and the worst option. Why? Because when you dissolve a business, you are shutting it down. When one of the partners buys out the other, or the business is split up into two stand-alone units, the business continues as a going concern. If the partners decide to sell the business to a third party, they may not only solve their partnership dispute, but also realize the highest and best return on their investment. By contrast, when you dissolve the business, you merely marshal the assets (inventory, receivables, equipment, etc.), sell them (usually for pennies on the dollar), and apply the net proceeds of sale to the payment of your payables and other liabilities. In the usual situation, there is precious little remaining to distribute to the partners.

So, given how unattractive dissolution is, why do we include it on the list of available options for partners looking to separate?

First of all, there are some unfortunate cases where dissolution is the only available option. Due to obsolescence, for example, a business may not be worth continuing, and may not be salable to a third party.

The other reason we keep dissolution on the list of available options is a technical, legal one. The laws of certain states (for example, New Jersey) recognize the rights of an owner holding 50% or less of a business to bring an action for “dissolution” if the owners are deadlocked in the management of the business, or if one of the owners has been a victim of “illegal, oppressive or fraudulent” conduct.

Why would the owner of a profitable business want to threaten the other owner with dissolution, knowing that a court order of dissolution would destroy the value of the business for both partners?

Those of you who grew up during the Cold War probably asked yourself a similar question about the United States and the Soviet Union. Why did each country point nuclear warheads at the other and threaten the complete annihilation of its rival, knowing that the other had the power to respond with its own nuclear arsenal powerful enough to obliterate the nation that fired first? This certainty of “mutual assured destruction,” or M.A.D. for short (what a great acronym!), was the factor that ensured that neither actor would unleash its weapons on the other.

Something similar is at work in cases where a partner seeks a judicial order of dissolution. It is the threat of mutual assured destruction that brings both parties to the negotiating table seeking a negotiated resolution of the partner dispute.



In this e-book’s next chapter on litigation, we will explore judicial dissolution and related topics in greater detail.

The laws of certain states recognize the rights of an owner holding 50% or less of a business to bring an action for “dissolution” if the owners are deadlocked’

What If My Partner Won't Participate In These Discussions?

When Should I Consider Litigation As A Means Of Resolving My Partnership Dispute?

When Richard began practicing law in 1979, it was common practice for lawyers to resolve business disputes without litigation. The lawyer for one party could write a letter to the lawyer for the other party laying out the facts and background on the dispute, citing applicable law, and arguing persuasively that the lawyers, or the lawyers and their clients, should meet and discuss a potential resolution of the dispute. If the letter was well-designed, well-written and persuasive, the lawyer on the other side of the matter might pick up the telephone, call the writer, and suggest that the lawyers get together for a "cup of coffee" to talk things over.



In the Eighties and into the early Nineties, cases – even somewhat complicated cases – actually got resolved in this way, to the great benefit of the clients.

What has happened in the last 20 to 25 years? We will leave it to others to explain the sociological and psychological reasons for the changes in American business culture. Why is it that the well-crafted "lawyer letter" is less and less likely to trigger a resolution of the dispute? Why is it that the only action that is likely to get the other party's attention is the filing of a lawsuit?

The truth – for better or worse – is that business owners have come to view "lawyer letters" or other threatened legal action short of litigation, as a non-credible threat, as something that can safely be ignored. There are exceptions, of course, but that is a well-established trend that is likely to continue for years into the future.

So what should you do if you have decided to separate from your partner, but your communication with your partner is non-existent, and your partner does not want to discuss an amicable break-up?

At a certain point, litigation may be the best option, if not the only option. The good news for the business owner searching for a way out of a bad partnership is that litigation can be an amazingly effective tool for resolving business divorce cases.

Here's why:

1. Many states have laws on the books that are specifically designed to assist business owners to obtain a business divorce. In New Jersey, for example, there is a statute called "The Oppressed Minority Shareholder Act" that allows a business owner, under circumstances in which the business owner's partner has acted fraudulently, illegally, mismanaged the business, abused his authority as an officer or director, or has acted "oppressively" or "unfairly" toward the business owner, to bring an action for judicial dissolution. Note that even a 50% partner qualifies as a "minority" under this statute. And don't assume that your partner's conduct won't rise to the level of "oppression" so as to place you within the protection of the statute. Most parties to a business divorce case will be able to qualify for the protection of this law.

Here is the actual language of New Jersey's "Oppressed Minority Shareholder Act" (N.J.S.A. 14A:12-7):

"The Superior Court, in an action brought under this section, may appoint a custodian, appoint a provisional director, order a sale of the corporation's stock as provided below, or enter a judgment dissolving the corporation, upon proof that

(a) The shareholders of the corporation are so divided in voting power that, for a period which includes the time when two consecutive annual meetings were or should have been held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors; or

(b) The directors of the corporation...are unable to effect action on one or more substantial matters respecting the management of the corporation's affairs; or

(c) In the case of a corporation having 25 or less shareholders, **the directors or those in control have acted fraudulently or illegally, mismanaged the corporation, or abused their authority as officers or directors or have acted oppressively or unfairly toward one or more minority shareholders** in their capacities as shareholders, directors, officers or employees." (Emphasis supplied)

2. Your business partner, who ignored or resisted your every attempt at an amicable resolution, won't be able to blow you off if you file suit.

3. Litigation does not have to be painful and aggravating. Those in your business or personal circle who have "litigation horror stories" to tell may have had negative experiences with litigation, but that doesn't mean that you will. Some business owners even find the process liberating because litigation works. It truly does offer a way out of a bad partnership.

4. A word about legal fees: Litigation does not need to cost an arm and a leg. Some attorneys will offer creative billing arrangements: fixed fees, contingent fees, hourly to a cap or hybrid arrangements. Seek them out.

What If You Suspect There Has Been Illegal Activity?

If you know or suspect that your partner has been engaging in illegal activity, you must consult with an attorney to learn how your partner's illegal, or potentially illegal, conduct affects you.



The Business Divorce is Finalized. Now What?

Ok, my partner is gone and I'm left with the business. Or, I'm out and the business is moving forward without me. Certainly there are some legal and financial things to take care of. But what about the people?

You have to move forward, pick up the pieces and rebuild relationships with your employees and customers. Perhaps there are other stakeholders like vendors and advisors that you'll want to address as well.

You could ignore everything that's happened and be factual and cold. You could pretend you never met those people or that nothing has changed.

But that's not how people are wired. They have feelings. They want closure. Some of them may have been rooting for you or against you. Or they may have been oblivious to things happening inside the company. Things have changed. Be responsible for closure. Be responsible for establishing a new relationship. Address changes in your status with appropriate modalities.

Email or letters are fine for vendors or occasional customers that you don't know personally.

But advisors, good customers, vendors who you know personally deserve a phone call to alert them to the new arrangement and gain closure if you're no longer part of the picture.

Staff with whom you've had personal relationships especially deserve to hear from you. You can explain briefly your new status without going into any history or details. You can ask questions such as:

- How does this change impact you and your job?
- How do you see this change impacting the organization?
- What would you like to see as we move forward?

The legalities of the Business Divorce may dictate, depending on the situation, whether or not you can contact former stakeholders in the business. That, of course, takes precedence. If that is not the case in your situation, be sensitive to people's feelings and needs. You don't have to tell them anything that is not their business. You can give them closure or establish a great relationship to move forward with (and, stop the gossip) by having frank conversations where appropriate about the impact on them.



9. More Real World Scenarios

Partners Break Up Amicably (with a little negotiation)

Situation: A and B are 50/50 shareholders in a consumer products business. A is 61 years old, B is 71 years old. B used to be in charge of the warehouse. However, the warehouse has been closed for a year, and B currently is doing nothing for the business. He wants to be bought out and wants a lot of money. A's wife also works in the business and instigates action with a business divorce attorney to come to a more realistic number for the buyout.

Action: Richard counselled A to hire a business valuation expert in order to develop a buy-out amount that was reasonable and defensible.

Richard also structured a buy-out proposal for A to present to B.

Results: After a little negotiation, A and B were able to mutually agree on a buyout number. A bought out B for a reasonable amount, and litigation was avoided.



The Non-Profit

Situation: Although this ebook is mostly focused on partnerships in for-profit businesses, the communication aspects apply to leaders of all organizations. A, B and C were directors of a non-profit focused on the arts. Their titles were founding director, executive director and artistic director. They couldn't get along and they were critical of each other. Their perceptions about each other were full of unmet expectations, hurt feelings, anger, and resentment. There was confusion about their roles. Some individuals on the Board of Directors were taking sides. The organization was at a standstill.

Action: The leadership of the Board brought Jeri in to coach the three directors and achieve some resolution so the organization could move forward. Jeri worked with A, B and C in multiple group sessions and several individual coaching calls. It was discovered that above all the bickering, there was a love for the art, the artists and for seeing the art promoted in the world. They learned each other's stories and back stories about how this love evolved. From this space of trust, respect and empathy, they learned each other's strengths and motivations. They explored where they had made decisions that had resulted in hurt and anger for the others. Apologies were made and new skills were learned about how to communicate more effectively. They pinned down their job descriptions and responsibilities of each of their roles. They explored the way things get done in other non-profits to add some objective models to the way they managed their own agency. They discussed what they each wanted for the agency and explored how they each wanted to contribute.

Results: It became apparent once the personality conflicts were resolved, role responsibilities were clarified, and communication was more fluid, that there were two conflicting directions. One was to keep the agency smaller and more focused on innovation and outreach. The other direction was to create a much larger organization focused on extravaganza performances. The directors, the board and the funding initiatives were all split on these two directions. The artistic director decided to leave the agency and start a production company that focused on large performances. The parts of the Board that favored that choice also left to become part of the Board for the new agency. Both organizations now have their focused directions and are moving forward.

The Table Turns

Situation: A, a man, and B, a woman, were 50/50 owners of a consumer based business. Many years ago they had been romantically involved, and B had gifted a 50% share of the business to A. Although their romantic relationship ended, they continued in their business partnership. Over time, A became physically and verbally abusive toward his partner. When B came to Richard, partner A had already commenced arbitration, which had not been going well for B.

Action: Richard came up with a strategy for removing the case from arbitration and placing the dispute in Court. The parties litigated for a year. Initially, A wanted to buy out B.



Results: Based on the leverage Richard created for B through litigation, partner A finally settled. The table turned. B was able to buy-out A's 50% interest at a bargain price.

Minor Partner Gets a Fair Deal

Situation: A and B own a software company. A owns 51% and B owns 49%. One day B comes to work and he's been terminated without cause and has been locked out of the company's offices.

Action: Richard worked with B to formulate a litigation strategy to put maximum pressure on A and bring him to the settlement table.

Results: The case settled. When A realized that he could not afford to buy out B for the fair value of his interest, A finally decided to sell the entire business to a private equity firm. B's capital stock interest in the Company was purchased for a fair amount.

The Business Divorce Institute, From Prevention to Finalization

Thank you for reading all the way through to the end. Something has caught your attention or you wouldn't be reading the last page.

Was it the discussion of ways to select and vet a partner?

Was it your interest in placing your partnership on a solid foundation with a written agreement and great communication?

Was it the annual partnership review that keeps your partnership growing and evolving over time?

Was it learning about the various ways in which you can divorce your business partner?

No matter what resonated with you, you probably have additional questions. We're here to support you as you explore the world of business partnerships. It's important. Get advice. Set it up right. Maintain it like you would a car or a marriage. It takes some work. If your partnership is broken beyond repair, then exit when you want and how you want in a way that will maximize the benefits to you, in a cost-effective manner.

10. Four Things To Do Now!

1. Contact us.

We're only a phone call or an email away.
Tell us your situation. We're good listeners.

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Richard Lambert

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2. Go to our website if you haven't been there already. Look for our blog posts, videos, and other tools. We want to serve you and make available tools that you can use. Use the opt-in box to get our newsletters emailed to you. They have suggestions and articles and tools to make your partnership work. www.BusinessDivorceInstitute.com. Enter comments about this ebook if it's made a difference for you.

3. Did you enjoy this ebook. Was it valuable? Then please help us spread it around so it can help more people. Forward the ebook to your partner(s), your friends, anyone you know in a partnership. Let it start a discussion about what's important in your partnership. Offer value to another business owner by giving them something they really want to read.



4. Help us promote this on social media. Put your recommendation and our website's url www.BusinessDivorceInstitute.com on LinkedIn, Facebook, Twitter, Instagram, anywhere where it can reach business owners.



Thank you for learning from our work. We can't wait to talk with you.

11. About the Business Divorce Institute and its Founders

The Business Divorce Institute

The Business Divorce Institute was created by Jeri and Richard because there was little to nothing available to serve the needs of business partners. We had met several years ago and had regularly kept in touch. One day at lunch a light bulb went off. When Richard talked about how he was helping partner breakups get resolved as win-win's, and Jeri talked about the role of communication in the lifecycle of a business, the idea was born to create a place where partners could get their questions asked, where partners could find a model of how to keep their partnership working well, where inquirers could get advice on who makes a good partner, where partners could learn all their choices if they wanted to split up, where they could feel heard and know that someone was listening. We wanted partners and potential partners to feel welcome and to know they were dealing with experienced experts in the field. The result is The Business Divorce Institute and this ebook. We hope that by reading this, your business and partnership (if you have partners) will flourish and you will be well prepared for the decisions you have to make now and in the future.

Please contact us if we can help with your specific situation.

The Business Divorce Institute



Jeri Quinn, CBC

Jeri at **Driving Improved Results** works with leaders, emerging leaders and organizations as a communications expert with a practice focused on neuroscience, often serving as an organizational or executive coach. Jeri's approach is 'caring curiosity with accountability' that builds trust and better relationships among:

- business partners,
- the principals in family businesses where a new generation is taking over,
- potential partners who are evaluating a partnership,
- merging or recently acquired companies,
- any other scenarios where short term and long term results could be exponential, mediocre or disastrous.

As a Conversational Intelligence® Certified coach, she facilitates the discussion informing the participants of the brain neurology happening, bringing out the best from each participant and creating shared success. The company culture shifts and all stakeholders benefit. Her work leads small and mid-size businesses to develop extraordinary and inspired financial and non-financial results.

The concepts and case studies in her book [*The Customer Loyalty Playbook: 12 Game Strategies to Drive Improved Results in Your Business*](#) were developed during her work as a serial entrepreneur, 40 years experience and familiarization with 40 industries. Jeri founded, grew and sold a technology firm, a commercial real estate firm and a variety of consultancies such as marketing and mental health.

Jeri is proud to have been selected to nominate and review companies for corporate culture awards and women's outstanding leadership awards for SmartCEO magazine in New York, New Jersey and Long Island. In addition to private clients, she partners with the Kauffman Foundation, New York City's Small Business Services, and the Industrial Technical Assistance Corporation.

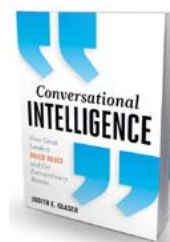
You can learn more about Jeri, her services, her publications and free resources at her web sites below. Much of her work is based on the groundbreaking work of Judith Glaser, author of [*Conversational Intelligence, How Great Leaders Build Trust and Get Extraordinary Results.*](#) Both Jeri's book and Judith's book are available at Amazon.

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The Business Divorce Institute



Richard J. Lambert, Esq.

For more than 20 years, Richard Lambert has been specializing in the emerging field of Business Divorce, helping clients extricate themselves from difficult—sometimes destructive and debilitating—partnership relationships.

Richard Lambert, Managing Partner of Dunn Lambert, L.L.C., is an innovator in the legal profession. He has created a special brand of legal services: a business law firm that is run like a business. Dunn Lambert, L.L.C. competes in the marketplace just like its clients compete – on the basis of quality, service and value.

With its big-firm capability and small-firm service, Dunn Lambert, L.L.C. has become a respected resource for comprehensive legal services for business in New York, New Jersey and beyond.

In addition to his extensive Business Divorce practice, Mr. Lambert is a business lawyer who serves as outside general counsel to a wide range of businesses, including many small to middle-market companies in a variety of industries. In his role as outside general counsel, Mr. Lambert provides counsel on the broad range of legal subjects affecting business, including mergers and acquisitions, joint ventures and financings; antitrust and distribution law; banking and commercial finance; employment law; contracts; trademarks; and the negotiated resolution of business disputes.

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