Breaking Up Is Hard to Do: A Primer on “Business Divorce” Litigation for Transactional Lawyers

Richard F. Munzinger, Frank A. Cialone, Robert Charles Ward

INTRODUCTION

Breaking up a business in California can be difficult, in some ways not unlike dissolving a marriage—emotional, expensive, and contentious. "Business divorce" litigation can be especially unpredictable when there is no written agreement governing the break up and the default statutory rules control. This article is intended for transactional lawyers who are faced with helping their clients choose the right form of entity and drafting the agreement(s) that will govern that entity. The purpose of this article is to discuss some of the issues that arise in dissolution or buyout litigation under the default statutory schemes for each of the primary forms of entity in California— partnerships, limited partnerships, corporations, and limited liability companies—so that transactional lawyers might better understand what their clients may face if they do not alter the default rules by agreement. As discussed in more detail below, transactional lawyers should work with clients to negotiate and draft elegant and workable contractual mechanisms to resolve impasses, to allow individual owners to exit voluntarily or to be forced out of the business, and to value and divide up the business in a buyout or dissolution.

GENERAL AND LIMITED PARTNERSHIPS

A general partnership is probably the most basic form through which two or more persons can choose to operate a business or make an investment together. If two individuals are in business together and they haven't created some other form of entity, they are probably partners. A partnership is "an association of two or more persons to carry on as co-owners a business for profit." Corp C §16202(a). A joint venture is another label sometimes put on such an association, and joint ventures are governed by the same California law as partnerships.

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