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Independence Day

## “Tip of the Month”

### LLC Instant Gridlock

Lots of limited liability companies are formed by two members. They could be close friends, spouses, family members. The two members are equal partners, 50-50, meaning neither has a majority vote. In effect, both are minority shareholders.

This can lead to gridlock in the event of disagreement. Sometimes, LLC members are stunned to learn how hard it can be to get out of the jam. The court option is not good because it calls for dissolution of the LLC. This would be selling off the company assets, paying all the creditors, and splitting the rest between the partners, if there is anything left. Courts are often reluctant to order dissolution.

So, good idea to think ahead. What could possibly go wrong? We routinely put mediation and arbitration provisions in LLC agreements, but these can also be cumbersome. Generally, we want to avoid hard feelings that can poison the relationship between two people who want to enjoy working together.

One method is to say it takes two to say yes and one to say no. That is, if either of the two members is opposed to the company doing something or taking a proposed action, the members have agreed in advance they won't do it. This can work very well if the two people are mostly on the same wavelength, but it can also hold the company back if one perceives the other to be spiteful.

A corollary method is to split responsibilities. That is, the partners decide at the outset who will be in charge of what. For example, one does front of the house, one does the back of the house business. This means that one is out there with the customers, and the other is in the back with all the books and accounts. Maybe these tasks can be swapped from time to time for cross-training, so each knows all aspects of the business, front and back.

Another parallel method can be to assign majority votes to particular topics. For example, one partner might have the last word on equipment purchases. The other partner might have the controlling vote on hiring and firing personnel. Identifying these topics and assigning final authority at the outset can make it easier to avoid terrible disputes later when both partners want the final say.

When all else fails, LLC members sometimes include a Texas Shootout provision in the LLC Agreement. One will propose to buy out the share of the other. The other then either takes the money for the half ownership share or offers the same amount and the first one must sell the half ownership share for that amount. It's risky. The best bet is to make sure you'll be comfortable doing business together before you get started.

If you're planning to start your business with a partner, then call the attorneys at Mesmer & Deleault today at (603)668-1971, or contact us by email at mailbox @ biz-patlaw.com.

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