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The Texas Shootout Provision to Resolve Owner Disputes

Michael Wildeveld, CEPA, M&AMI, CM&AP, CM&AA, CBI, CBB
michaelw@veldma.com

Veld Mergers & Acquisitions
www.veldma.com
1 Park Plaza, 600
Irvine, CA 92614
310-652-8066

What happens when two, or more, non-controlling (usually equal) owners become locked in a bitter dispute but neither is able to fire or get rid of the other? How can a buy/sell agreement be designed to resolve this unfortunate but, all too common, situation?

Owners starting a business together, usually have the same goals, the same aspirations, and an identical work ethic. If the business becomes successful, cash distributions and salaries remain equal; but one owner (at least from the other owner's perspective!) may lose focus, ambition, drive, or desire. Meanwhile, the other owner views herself as the glue holding the business together. In her opinion, her ambition and drive still burn as fiercely as the first day the business opened its doors.

In this situation, owners typically stop talking to one another or their attempts to discuss differences end in argument and barely-concealed hostility and contempt. The only resolution seems to be for one owner—usually the less dedicated one—to be bought out. But why would he want to get off the gravy train? He isn't working very hard yet enjoys the same income, the same status, and the same right to the future growth in value of the company as the owner who devotes all her waking hours to the business. The typical result is deadlock, and a slow decline in the company's fortunes.

If the dispute, usually regarding the future course of the business, reaches the "bitter" threshold, there is only one resolution. One of the owners must be forced to sell his or her stock and get out of the business. Here is one way to manage this forceful-by-design exit.

The Texas Shootout Provision

When you design your buy/sell agreement, you can include a provision that stipulates that either shareholder may offer to purchase the other shareholder's interest. The second shareholder must then either accept the offer and sell his stock or purchase the first owner's interest for the same price, terms and

conditions spelled out in the offer. In other words, the second shareholder has only two choices: He must either accept the offer and sell his stock or turn the tables and buy the offering shareholder's stock.

At the conclusion of this buyout, there will be only one shareholder. We call this method the "Texas Shootout Provision" because at the end of the day, only one shareholder remains standing. It is a painful remedy to be sure. It is undertaken only when there is no alternative that the parties can agree upon. Simply having the Texas Shootout Provision included in the buy/sell agreement encourages owners who are not getting along with each other to agree to a buyout of one party or the other. If they do not, the foot-dragging partner cannot prevent the eventual buyout of his stock.

You can design the Texas Shootout Provision to offer one other alternative. It could allow either party—if both parties can't get along--to dissolve the business, pay off its debts, distribute the assets, and start all over. The bottom line is this: If co-owners, neither of whom have the ability to get rid of the other, reach a deadlock, the existence of a Texas Shootout Provision in a buy-sell agreement provides an effective, if painful, remedy.