Ask an Expert

Texas Shoot-Outs … Always Plan an Exit

Obtaining qualified legal advice at the outset on alternative exit plans for any business venture is essential. A "Texas Shoot-Out" is just one of several options available to parties if it's included in a written agreement. This technique is often suggested when ownership of a company is split evenly between two owners.

Whether it's a partnership, LLC or corporation is irrelevant for this discussion. A problem can arise if they do not have a written agreement that governs how to separate from one another if it becomes necessary. Things can turn ugly and costly very quickly in the event that a written exit plan doesn't exist. This can happen even if a written agreement exists but it is less likely to occur.

We are often engaged to resolve or litigate parties in a "business divorce." One recent experience involved a dispute between owners of an 80 year-old company. Each shareholder in that case spent well in excess of $250,000 on legal fees and experts and both owners ultimately lost control of their business.

Obtaining qualified legal advice to explain and draft alternative exit strategies is essential for most clients. Several different mechanisms may be agreed upon to provide a means to terminate a relationship, including a "Texas Shoot-Out". Simply stated, a "Texas Shoot-Out" allows either partner to notify the other partner of her or his intention to purchase the other partner's 50% interest in the company at a stated price and specified terms. The other partner must either accept the offer to sell, or alternatively, elect to purchase the 50% interest of the partner that initially made the offer at the same price and on the same terms.

For example, Gary and Michael each own 50% of a software company. Several longstanding disagreements developed about the future direction of the company. Among other provisions, the partners included a "Texas Shoot-Out" in their LLC agreement. Gary initiates the process by offering to purchase Michael's 50% interest for $2,000,000. Michael must decide whether to sell his 50% interest in the company to Gary for $2,000,000 or to buy Gary's interest for the same price. If Michael declines the offer and doesn't exercise his purchase rights, Gary is obligated to purchase Michael's interest for $2,000,000. If Michael decides to buy then Gary must sell his interest for the same $2,000,000. Hence, a "Texas Shoot-Out" has occurred.

This method can quickly resolve business divorces but it is not without risk. For example, if one partner doesn't have easy access to capital and the other does and the "Texas Shoot-Out" offer is for a cash buy-out, the partner with easy access to cash could possibly buy the other partner's interest for a price that may otherwise be "below market".

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For more information relating to exit strategies and other terms in a partnership, operating agreement or shareholders' agreement, contact either of the co-authors of this column, Dominic P. Marco, Jr., Esq. at 215-278-4161 or email dmarco@lauletta.com or Lloyd C. Birnbaum, Esq. at 856-861-4062 or email lcbirnbaum@lauletta.com, both attorneys at Lauletta Birnbaum, LLC.

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