

Special points of interest:

- **Deadlock**
- **Planning For Incapacity**
- **Small Claims**
- **Intestate Succession**

Business, Estate, and Tax Planning

Deadlock

You have seen the next scenario may times. John and Larry are best friends. John has all the customer contacts, and Larry has the know-how. They have known one another for a year, and now want to start a new venture and own their own business. Oh, and one other thing, since they are the greatest of friends, they want to own the new venture equally.

In virtually every consult with clients like John and Larry, they rarely consider the possibility that they may disagree on operations. I must then counsel the client on potential pitfalls in the new venture's operations; such as potential deadlocks or a business' inability to operate when the owners cannot agree on a course of action.

Disagreements occur among owners in a business on a regular basis. The majority owner generally resolves most such disagreements

within a day, a week, or even a month and the business continues. However, in John and Larry's situation where they each own equal shares (50/50), an owner disagreement may result in deadlock. An important, but often overlooked aspect of business formation, is to insert a deadlock provision in the Company agreement.

When drafting deadlock provisions, the crucial initial issue is to determine the scope of decisions that result in "deadlock." First, the owners should make the distinction between a legal dispute and a deadlock. A legal dispute arises when owners disagree about their contractual rights and obligations. For instance, if management makes a capital call that an owner thinks management lacks the authority to make, it is a legal dispute. A legal dispute should be resolved by mediation, arbitration, litigation or other similar legal

process, according to the options set forth in the company agreement. Contrast a legal dispute with deadlock where a capital call simply requires unanimous approval and the owners disagree on the need for new capital; a court cannot force the parties to conclude that there is or is not a need for capital. Deadlocks require resolution outside the legal process because a business issue, not a legal issue, is at stake.

Second, the owners must realize that some deadlocks may be acceptable. For instance, if the owners decided that they will not sell the company unless a certain percentage of owners agree, the inability to agree means that the company is not sold. Quite simply, some deadlocks may result in inaction and others may force a decision. Owners should identify those decisions where deadlock--the inability to achieve the required approval--would

Small Claims Court

Small claims court is the real "People's Court." The purpose of small claims court is to provide an informal, uncomplicated proceeding to resolve small disputes that do not involve enough money to warrant the expense of formal litigation. Most people who appear in small claims court do not have a lawyer but represent themselves. You can have a lawyer present though and, in some cases, having lawyer present is the difference between winning and losing. The Basics:

Not all disputes can be heard in small claims court. Small claims court cannot hear disputes involving more than \$10,000. No matter how important the case is to your client, and no matter how well I convince the judge that he or she deserve to recover more, the judge in small claims court simply cannot rule on a dispute for more than \$10,000 plus court costs. Small claims court can only award money. It cannot, for example, order a

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Deadlock (Cont'd from page 1)

“Another solution to deadlock is to wind up the business operations by selling the business to a third party...”

frustrate the business operations to such a substantial degree that some mechanism is needed to resolve the deadlock. The parties should also consider whether they can identify situations where a change in circumstances should change the decision-making process. Again, as an example, the approvals required to sell the company might change depending on the company's financial performance, the availability of key personnel and key assets, the ability to attract financing, the trends in market position and other metrics. While it can be difficult to describe in advance the circumstances in which entity governance should change, it can be helpful to consider these metrics while they are abstract and not personal to any owner's situation. For instance, it may be easier at the outset to propose a

provision which allows removal of a bankrupt manager or other decisionmaker when the possibility of that scenario is a hypothetical.

Solutions:

When deadlock occurs, one solution is to require or allow one or more owners to exit the company so that those remaining can continue the business operations in the manner they so desire. These deadlock-breaking mechanisms generally include buy/sell rights.

Another solution to deadlock is

to wind up the business operations by selling the business to a third party or to one of the owners, or splitting the company assets among the owners in a pre-determined manner.

Aside from exit, members may resolve deadlock by referring the decision to trusted outside business advisors or to a mediation process.

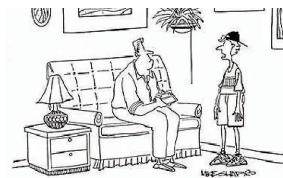
As with many legal issues, deadlock can be avoided or at least easier to manage with the right planning in place.



Planning for Incapacity

Estate planning is not only planning for control of assets at death, but also control of assets during life. In addition, to a Will, the fundamental estate plan also consists of a (i) statutory durable power of attorney (“DPOA”); (ii) a medical power of attorney (“MPOA”); and a (iii) directive to physicians. A DPOA appoints an agent to act on your

behalf, with respect to money or property, where you are incapacitated or unavailable to act. Without an agent appointed to act on your behalf at incapacity, a guardianship proceeding is necessary to appoint someone for you.



“A raise in my allowance is fine, dad. But what I'm really after is power of attorney.”

This process is expensive. A MPOA simply appoints someone as agent to make medical decisions on your behalf if you are unable. Finally, a directive to physicians simply provides whether you wish to use, or not to use, life-prolonging procedures to keep you alive if you are terminally ill.

Small Claims... (Cont'd from Page 1)

mechanic to fix one's car correctly. The court could only award the monetary damages your client suffered because the car was not repaired the way that was promised.

Should I Hire a Lawyer?

If attempts to settle the dispute are unsuccessful, an attorney may be able to assist your client. In some cases, your client will be

entitled by to recover attorney's fees. Even in small claims court, a lawyer can often increase the chance of winning or advise regarding opportunities to collect additional damages. For example, in certain consumer and landlord tenant disputes one can recover three times one's damages. An attorney may be able to advise about these laws

or refer your client to other publications for assistance. Thus, If the amount involved is significant, or if your client is not comfortable representing himself, the assistance of an attorney may be a good idea and Stone and Associates has ample experience in all local JP courts to provide such assistance.



Intestate Succession

Texas law (the “Code”) provides every Texan with a “default” Will for all those who choose not to obtain a Will. The following is a sample “default” will, with some of the more shocking provisions underlined

I, JOHN Q. PUBLIC, of Any City, Texas, declare this to be my Last Will and Testament.

FIRST ARTICLE

I. If I have no children from a previous marriage, I give my wife all of my community property. If I have children from a previous marriage, I give my children all of my community property. Texas Probate Code (“TPC”) §45.

II. I give my wife one-third of my separate personal property, and a life estate in one-third of my separate real property. I give my children the remaining two-thirds of my separate personal property, two-thirds of my separate real property, and a remainder interest in the life estate in my separate property given to my wife. TPC §38.

III. As a further safeguard, I direct my wife to post bond before she can take any action. TPC §194.

IV. As a final safeguard, my children may demand and receive a complete accounting from their

mother of all her financial actions with their money as soon as they are 18. TPC §149A.

V. When my children are 18 they shall have full rights to withdraw and spend their shares of my estate. No one will have any right to question my children's actions on how they decide to spend their respective shares. TPC §3(t).

SECOND ARTICLE

Should my wife remarry, and thereafter die having made no legal will, her second husband shall be entitled to the property I left my wife. Texas Family Code (“TFC”) §3.003.

I. Should my children need some of this share for their support, the second husband shall not be bound to spend any part of his share on my children's behalf. Id.

II. The second husband shall have the sole right to decide who is to get his share, even to the exclusion of my children. Id.

THIRD ARTICLE

Should my wife predecease me or die while any of my children are minors I do not wish to exercise my right to nominate the Guardian of my children.

FOURTH ARTICLE

Under existing tax law, there are

certain legitimate avenues open to me to lower death taxes. Since I prefer to have my money used for governmental purposes rather than for the benefit of my wife and children, I direct that no effort be made to lower taxes.

FIFTH ARTICLE

I direct by my inaction that my estate be supervised by the Probate Court. TPC §§82, 48.

I. I direct my widow and children to apply to the Probate Court for a Widow's and Family Allowance to maintain themselves for the 12 months immediately following my death. TPC §§ 273-276

II. I further direct that my wife shall first apply to the Probate Court for permission to pay my just debts out of my estate. TPC §§294-329.

III. If it is necessary to sell or dispose of any of my real or personal property in order to satisfy any of my just debts, I want my wife to have to apply for permission to make such disposition on whatever terms the Probate Court requires. Id.

To prevent the above from happening. Always remember to address estate planning with your clients.

Every Texan has a Will, whether they know it or not, provided courtesy of the law.

Who Works at Stone and Associates, L.L.P.?

Tom Stone started Stone and Associates, L.L.P. ten years ago with the goal of providing quality, reasonably priced legal services for The Woodlands and surrounding communities. Having lived in The Woodlands over 25 years, Tom's client list and reputation grew quickly and what started with just him and one legal assistant has grown into a law firm with four attorneys and four staff ready and willing to assist clients in any business, estate, and tax transaction with which he, she, or it requires assistance.

ATTORNEYS

Tom Stone is the founding member and handles some of the administrative

side of the law firm.

Jay Knighton became the managing partner two years ago and has grown the firm since assuming the role of managing partner.

Brent Stanfield has been with the firm nearly four years and handles all business litigation for the law firm.

Nick Dupre joined the firm in October of 2008 and concentrates on probate, estate and gift tax planning, business planning and taxation, asset protection, estate administration, elder law, and charitable organizations

STAFF

Penni Clos is our office manager and keeps the rest of the staff and attorneys

in line, organized, and focused on the ultimate goal of client satisfaction.

Meagan Katzer is the estate and business planning legal assistant and has worked with the firm for three years.

Lorna Welborn is the newest member of the firm and assists in all litigation and probate matters.

Vanessa Carballo assists with document preparation and other administrative duties that allows the firm to run more efficiently and cost-effectively.

Stone & Associates, LLP

2202 Timberloch Place, Suite 250
The Woodlands, Texas 77380

Phone: 281-681-3004

Fax: 281-681-3007

E-mail: Penni@stoneandassociates.net

*Business, Estate, and
Tax Planning for
Generations*



Stone & Associates, LLP's practice focuses on estate planning, probate and estate administration, business law, business transactions, tax planning and controversies, and business litigation. Additional credentials such as Board Certification in Estate Planning and Probate by the Texas Board of Legal Specialization, CPA and Masters of Laws in Taxation (LLM), combined with years of practical experience, make our attorneys uniquely qualified to address the business and tax issues inherent in these areas of law.

Our clients desire to minimize taxes and protect their assets, with the ultimate goal of maintaining and preserving wealth for themselves and future generations. We lead our clients through the complex maze of Federal and State laws to this ultimate goal.

The four attorneys of Stone & Associates, LLP, frequently present continuing education seminars to certified public accountants, certified financial planners, realtors, and licensed insurance agents. We explain complicated business, estate, and tax laws in an understandable manner that our clients and other professionals appreciate. Not surprisingly, Stone & Associates, LLP, has quickly become the firm that professionals seek for their clients' estate planning, taxation, and business law needs.

This issue contains four articles that you may find relevant to your clients throughout the year. As is customary in our past issues, we prepared articles dealing with tax, estate planning, business transaction, and general business based on current issues our clients faced over the last few months. As always, we are here to serve as a resource to you and your clients, so please call or e-mail if



Stone and Associates, LLP

2202 Timberloch Place, Suite 250 • The Woodlands, Texas 77380

WWW.STONEANDASSOCIATES.NET