It’s never easy to ‘divorce’ a business partner. So make sure your buy-sell agreement covers the leading cause of business breakups—disagreement.

By Joseph Arkin

Many contractors enter a business venture but neglect to provide a means of “divorce” from their partners. Buy-sell agreements often dwell on death or permanent disability, but ignore the fact that most businesses are dissolved by disagreements or personality conflicts.

Perhaps you will never be faced with the problem of breaking up your business. But it’s a good idea to reread your buy-sell agreement and know what provisions have been made for dissolution. Any “divorce” has a different set of circumstances, and there are no easy solutions to the many problems involved. However, the following are some basic areas of concern:
Outstanding debts can be assigned to the individual who is going to ‘service’ that customer.

Provisions for Settlement of Debts

To protect each partner or corporate stockholder, adequate provision should be made for payment of all debts to vendors and for filing final tax returns. Continuation of any pension trust must be assured by transferring the trust to whomever elects to continue the business (see your trust agreement provisions for transfers to succeeding interests). Obligations should be defined for contracts, equipment leases and contingent liabilities.

Collection of Accounts Receivable

A simple solution is to designate the business’ accountant or lawyer as collection agent, and then notify clients that receivables are to be remitted to him as trustee. Outstanding debts can be assigned to the individual who is going to “service” that particular customer after termination of the business. But adjustment must be made for these outstanding debts when remaining net assets are distributed. The partner or stockholder who takes on a disproportionate amount of uncollected accounts may get the short end of the stick if part of these debts become uncollectable.

Division of Remaining Assets

After paying debts and arranging for collection of accounts receivable, the remaining cash is split according to partnership capital accounts or corporate shareholdings. This is the easy part. But how do you divide office and other machinery and equipment? Or such physical improvements as floor coverings, electrical wiring, plumbing and decorating? And who gets to keep the office telephone number? The latter point is all-important, since customers tend to return to a familiar place. Perhaps the fairest plan is for all the members of the firm being dissolved to start up business in a new location, give up the phone number, and sell all equipment and inventory through a dealer or through classified advertising. If one partner or stockholder buys the equipment and leasehold improvements, he will have an advantage not only in keeping those clients assigned to him, but also in attracting new clients and customers assigned to his former associates.

Dividing the Clientele

The clients or customers are a big asset in any business, because they provide the income. If two or more businesses were originally merged to form the present business, customers might be “assigned” to the individual who brought them into the business. At the time the business is dissolved, inequities will result if some customers have died, gone out of business, or moved to other cities.

Division of Staff

Every business spends countless hours and dollars to train sales personnel and other staff members. Consequently, in a break-up each firm member will want to retain the more experienced help for any enterprise he plans to undertake. To avoid a bidding war, salary offers can be limited to 115 percent to 125 percent of current salary. If no settlement can be reached, the only solution is to let staff members pick the person for whom they want to work.

Provisions for dissolution of a business should be made while you are friendly with your associates and no ill-feeling exists. Once you reach the point of getting that ‘divorce” it is too late. Animosity only clouds and creates additional obstacles.