

Perspectives *For Business Owners*

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A photograph showing a person's hands holding a white sign with a black rectangular area containing the word 'OPEN' in large yellow letters. Below this, the words 'BUSINESS AS' and 'NEW NORMAL' are printed in bold black letters. The background is a blurred office setting with a person in a blue shirt and a white face mask.

OPEN
BUSINESS AS
NEW NORMAL

Has COVID-19 Escalated Disagreements Between Business Owners?

Business owners faced with extraordinary operational and financial challenges caused by the COVID-19 pandemic may also be managing special demands and concerns posed by their owners. There is never a good time for an internal ownership squabble to bubble up to the surface, but owner conflicts or differences can be particularly troublesome when the business is already under duress.

Disruption Can Create Conflict

There is no question that the pandemic has impacted many businesses' finances and strategy, as well as relationships between co-owners. The warning signs of an owner disagreement should never be ignored. If left unchecked, these misunderstandings can cause real damage to a company's health and vitality including negative impacts on the bottom line, employee morale, and even relationships with creditors, customers and suppliers. A company can be particularly vulnerable at critical moments when its owners may already be dealing with the pandemic ramifications or other financial and operational challenges. Do not wait for the perfect time to deal with owner disagreements because that time will never come. The stability of a company's day-to-day operations and future financial success are often dependent upon resolution of these multi-faceted disagreements between owners.

“ **Disgruntled owners may behave poorly** with employees, customers, and other critical partners. If the **conflict is not handled properly or on a timely basis**, the unhappy owner may take legal action.”

Owner dissatisfaction can occur for any number of reasons. Given current economic pressures, a co-owner may be unhappy with a cut in compensation, requests to infuse capital into the business or to guarantee additional debt. An owner may be facing personal financial challenges. They may also be upset about shifting priorities created by the current market or how best to reset the business in the post-pandemic period, particularly as the business adapts to working remotely or implements necessary adjustments in operations. In addition, an owner may be frustrated if an anticipated sale of the business or a transition of ownership to the next generation has been delayed or abandoned in light of the current business climate. These issues can escalate when family members or longtime business owners simply do not get along or do not trust each other.

The Path Forward Begins with Communication

What is the best way to handle these and other ownership issues? In a word, “talk.” While it may seem obvious, it’s also emotional and not always an easy conversation. Listen to each other’s concerns, determine the best course of action to address them (can something be done about it?) and ultimately, the decisionmaker(s) can communicate the decision and the reason for it. If ignored, a co-owner may feel marginalized or misunderstood.

Disgruntled or even desperate owners may behave poorly with employees, customers, and other critical partners. If the conflict is not handled properly or on a timely basis, the unhappy owner may take legal action. At a minimum, clear communication should lead to greater appreciation and understanding of the issues by all business owners. Ideally, the co-owners can listen to each other and “knuckle down” to resolve the disagreement in a manner that is satisfactory to all owners, even if that may require some form of mediation.



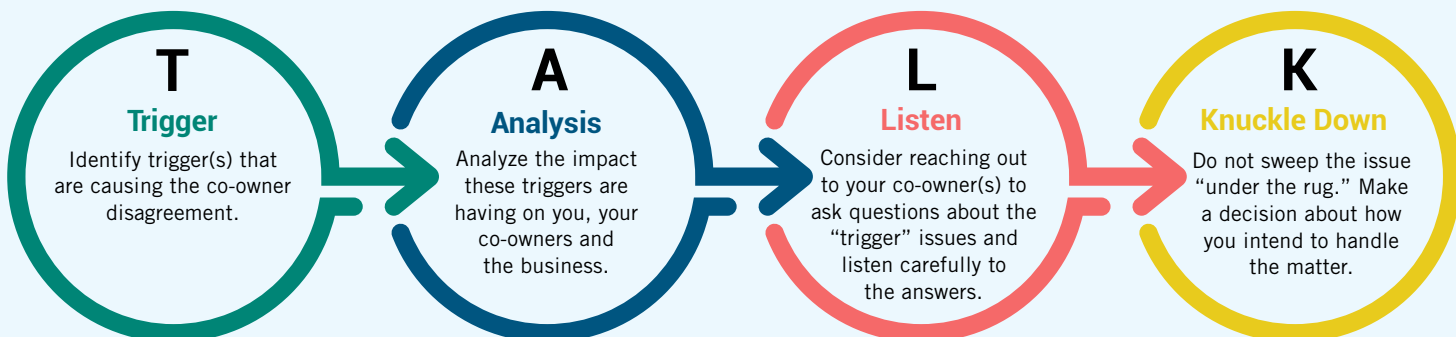
Legal Counsel Can Help

Effective communication can be enhanced by having a legal advisor analyze the critical documents affecting the parties’ rights and obligations. That way, an owner is in a better position to understand what is possible from a legal perspective, while not losing sight of the business priorities. In sum, a conversation between owners has a better chance to succeed if the owners try to develop an appreciation for the legal, financial, operational and personality dynamics involved. The goal should be to develop an appropriate strategy to resolve the disputes in a manner that meets owners’ mutually agreeable objectives.

The strategy, leverage and options available to business owners can differ significantly based on their percentage of ownership, their rights as defined in the governing documents, the owner’s importance to the business, and a number of other factors. Legal counsel’s role is often limited to “behind the scenes” counseling, but can take whatever form best suits the situation. Babst Calland has extensive experience representing majority, minority and equal percentage business owners at every phase of a disagreement. When appropriate, we can become more actively involved through communications and/or negotiations with other business owners and their counsel. We are also experienced at litigating these matters –through trial if necessary.

A Path to Clear Communication and Resolution: T-A-L-K!

When experiencing any kind of business disruption or personal conflict, the first and only place to start a process for resolution is to T-A-L-K! This simple word, turned acronym, will help inspire you and your business partner(s) to a resolution or settlement:



Walking the T-A-L-K: A Real Life Case

Applying the T-A-L-K theory and acronym for mitigating or resolving conflicts among business partners or owners, here is a common real life example of a matter in which Attorney Kevin Douglass advised a business owner who communicated effectively to a mutually beneficial resolution.

Trigger

A business owner discovered that his partner was “stealing” from the company (i.e. withdrawing excessive amounts of cash from the business) even though for years their compensation had always been roughly equal. The owner was bitter, angry and hurt by the perceived deception, but did not know what to do about it or what options were available to him.

Analysis

Rather than just stew about it, he eventually consulted me. He began to consider the reasons why his partner might be taking extra money when his partner had never done so before. He concluded that his partner might have legitimate personal financial issues that were driving his actions including financial pressures associated with college-aged children, weddings and other extraordinary expenses. This information enabled him to gain some perspective on the perceived slight—even though he obviously remained concerned about his partner’s actions. He considered alternatives, including litigation.

Listen

Rather than involve counsel and escalate matters further, the disgruntled owner decided he would approach his partner directly to discuss the issue. After considering how to handle the possible reactions from his partner, he felt prepared and confident about having a direct conversation. He approached his partner, and they had a professional and civil discussion.

Knuckle Down

Ultimately, the owner decided to negotiate a buyout of his interest in the business—particularly because he was nearing retirement age. His ability to approach his partner without excessive emotion helped pave the way for a constructive discussion and negotiation. He was able to leave the business with money in his pocket.

Attorney Kevin K. Douglass frequently provides client counseling, mediation and litigation services to businesses, business owners, co-venturers, managers, directors, officers and/or employees when disagreements arise between or among them or with third parties. Mr. Douglass can be reached at kdouglass@babstcalland.com, or at 412.394.6562.

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