

# Expect the unexpected

## Address potential conflict at the front end when forming your joint venture

INTERVIEWED BY MARK SCOTT

Opportunity abounds when the initial plans to form a joint venture are being drafted. You see numerous opportunities for growth and express confidence that the new partnership will be a boon to everyone involved.

It is during this time of great camaraderie that you should take a few moments to spell out in clear legal terms what actions would be taken if the joint venture doesn't go according to plan, says Elizabeth G. Yeargin, a Partner at Brouse McDowell.

"You want language in your agreement that will encourage you to keep working together rather than give up if you have difficulties," she says. "Some companies take the chance that things will work out and obviously, you hope that it does. But if it doesn't, you end up fighting it out, often in court. That's not the goal."

*Smart Business* spoke with Yeargin about why you need to prepare for potential conflict in your joint venture.

### How do you approach a deadlock amongst joint venture partners?

Deadlock becomes more likely to occur when you have two leaders with strong personalities who will now have to share decision-making responsibilities. This can be difficult for someone who is used to being in charge and reporting to no one. Draft a pre-agreed upon plan that lays out the steps that will be taken to resolve the deadlock with the worst-case scenario being the dissolution of the joint venture.

The first step might be that you get together and have a meeting. If that doesn't work, you can bring in an independent third party that you both mutually respect and hope he or she can bridge the gap. If you're still split, take a more formal approach and try mediation. When you've gone through

all your options and still can't agree, you can move to the breakup of your joint venture, whether through a buy-out of one of the partners or the dissolution of the venture.

### What challenges can the breakup of a joint venture present?

Breakups come about for a couple of reasons. It could be a case of deadlock in which you and your partner cannot agree on operating the venture and need a mechanism to get out of the partnership. But another scenario could be that one person just wants to leave the business and do something else or wants to stay in the business, but lead it without a partner.

You need to contemplate a provision where one partner can propose an offer to buy the other out. Also consider whether you want to allow potential offers from third parties to buy a partner out and if the other partner wants a right of first refusal if that happens. Do you want the right to tag along if your joint venture partner wants to sell and also be bought out? You may also want to think about a provision where nobody has the right to buy anybody out for a given period of time to give the joint venture a chance to succeed.

Another big thing is valuing the company. If one partner is providing the intellectual property or reputation and business connections in the community and that



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partner leaves, how does that affect the company's value? Bring in a professional familiar with your particular line of business who can help you put together a precise formula that can be used to value the company.

### What about noncompete provisions?

There are two things to consider in drafting a noncompete provision. The first is determining what the partners can do while the joint venture is operating. Figure out the different lines of business in which the joint venture members are involved and the extent to which they can independently compete with the venture. You want to be careful not to restrain trade, so consult with an antitrust attorney. The other aspect is what happens if one of the partners is bought out or leaves the joint venture. You need to define the parameters of a trailing noncompete prohibition and how long it should last.

### What if both partners want to change the rules?

Any joint venture agreement should have a provision that states the agreement itself can be amended and how that can be done. Be thoughtful before entering a joint venture. Consider all possible scenarios while you're both on the same page. That makes it a lot easier down the road if things go awry. ●