



edKINBERG

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An Ounce of Prevention

Solving Legal Problems Before They Arise

My job is helping people resolve disputes. Sometimes I work as an advocate for one side, sometimes as a neutral mediator helping people find their own solutions and sometimes as an arbitrator making decisions for them.

Most disputes arise when **PEOPLE FEEL THEY ARE NOT BEING TREATED FAIRLY** and don't feel they can discuss the problem with other decision-makers.

My observation is that people tend to delay seeking legal assistance until they are forced into litigation. I believe litigation can frequently be avoided if legal assistance to develop an agreement requires involved parties to engage in meaningful communications about disputes prior to filing a lawsuit.

One of the most valuable tools available to a business is a well-written agreement addressing common issues that can divert your attention, time and money from building your business to defending your business. Such issues include:

- **Ownership and control of the business;**
- **Preventing your partners and employees from using proprietary or sensitive information they learned from your business to build a competing business; and**
- **Protection of intellectual property.**

Preparing partnership, shareholder or membership agreements; non-compete and confidentiality agreements; and trademark, copyright and patent agreements will provide the tools for avoiding and/or resolving most common business disputes.

While you can find forms for various business agreements on the Internet, these forms should only be used as a starting point to prepare an agreement for review by an experienced attorney who will ensure your agreement complies with local, state and federal law. All of your agreements should contain a dispute resolution procedure designed to help you resolve a problem and avoid lawsuits.

From my perspective, one of the most critical parts of any agreement is a well-written dispute resolution provision. Most disputes arise when people feel they are not being treated fairly and don't feel they can discuss the problem with other decision-makers. Instead of expressing their views out in the open, they tend to let them sit on the "back burner" until they get angry enough to consult an attorney.

By including the following procedures in a dispute resolution provision you can ensure the issues are fully developed before an attorney is consulted:

- 1** **The party raising the issue** is required to provide written notice to the other party setting forth specific complaints and proposing a plan to resolve the matter.

2 The party receiving the notice must submit a response raising any additional concerns as well as a proposed resolution.

3 This written exchange would be followed by an informal meeting between all involved to see if they can agree on a resolution.

4 If a resolution cannot be reached by an informal meeting, a neutral third person should be used to help each side clarify their concerns and craft a solution. The neutral third person does not need to be a trained mediator or an attorney; it can be someone, such as a business associate trusted and respected by both parties.

5 If a neutral third person is not successful, a formal mediation session with a trained mediator should be required.

6 If the parties cannot reach a resolution after formal mediation, the final step would be a lawsuit or arbitration.

While this process may seem cumbersome, it substantially increases the likelihood your business will be able to resolve disputes quickly and effectively with little impact on your ability to keep focused on building your business. Reducing problems to writing helps you to clearly identify the core issues involved, resulting in meaningful discussions which may lead to early resolution of your dispute.

In addition, the process of putting your concerns in writing will allow you to organize your thoughts and the documents supporting your position. Should it ultimately be necessary to seek the advice of an attorney, your attorney will be better equipped to quickly assess the nature of the dispute.

You should keep in mind pursuing a lawsuit is time consuming and expensive with no guarantee of favorable results. By preparing a well-written agreement that provides procedures for resolving common business disputes you can better focus on your main objective: building a great business. ♦

JP

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