

Pay Me Now or Pay Me Later

Sometimes the money people spend on legal fees is well and wisely spent and sometimes it isn't. Most of the time it depends upon whether or not you are spending the money for a lawyer to get you out of trouble or whether you are spending it on legal advice to avoid getting into trouble in the first place.

Generally speaking, paying for planning advice is much cheaper and far more effective than paying for damage control. In that respect, legal advice is a bit like automobile maintenance. It is cheaper in the long run to attempt to avoid trouble as opposed to waiting till you get into trouble, then spending money on legal fees in the hopes of getting out.

Some prime examples of these types of situations would be Shareholders Agreements, Partnership Agreements, Estate Planning, Pre-Nuptial Agreements and the like. These types of agreements all basically deal with the various contingencies that might arise in the murky future (many of which you would likely never think of) as well as all the ways that things can go wrong in a relationship.

For example, what do you do in a partnership in the event that one of your partners dies prematurely? Sadly, such things happen all too often. The question soon becomes whether or not you want to carry on business with your partner's wife? How does your partner feel about going into business with your wife after you have shuffled off this mortal coil? How does your wife feel about you going into business with his wife after he dies? As you might expect, by the time it happens there are lots more questions than answers.

Might you want to buy out your dead partner's interest? What about buying him out while he is alive or vice versa? How does your partner feel about that? If one of you does buy out the other's interest, where is the money going to come from if all you both have is tied up in the business? If you buy him out, what is he going to do for a living afterwards?

What if instead of dying, you are horribly injured in a car accident, go crazy, have your license revoked, etc, etc? What if you become an alcoholic, a drug addict, steal from the business? What if your partner just gets burnt out and no longer comes to work? What if you want to sell your shares and your partner doesn't want to buy them? Can you sell your interest in the business to a third party without offering them first to your partner?

These are not idle musings - they are real life problems that can actually happen to you (or anyone, for that matter). If you don't have an answer, you are going to wish you had read this column and done something about it a long time ago.

I am sure that some of you who are reading this are saying, "Sure, that may be true for other people but I know my partner like the back of my hand and that would never happen to us." If you are that person I have two simple questions for you. First, is there anything about you that could affect the business that your partner doesn't know about? Second, what makes your partner different in that respect?

Often, by sitting down and working through what to do in the event of various calamities the parties are better able to avoid these problems. With a little forethought they are not only able to plan for such contingencies but also to deal with them if or when they do arise. Of course, it goes without saying that dealing with such a problem in the abstract with cool heads is a lot more likely to result in a reasonable settlement or compromise than trying to negotiate an agreement with someone who is angry, bitter and staring the problem in the face.

It occasionally happens that prospective partners have so much difficulty resolving these hypothetical problems that they realize that they will not be able to work together to solve the real problems that are bound to crop up. In such a case, it may be better to find out about the unsuitability at the outset when there is still a chance of backing out without irreparable harm having been done.

I have never fully understood why it is that only the rich tend to use lawyers in this way. Rich folks don't make a legal or a financial move without first getting advice. They "fear to tread" where "fools rush in". Perhaps that is because they also have a professional to sue if things don't work out the way they were told.

Admittedly, there may be times when you pay for legal advice that turns out to be unnecessary. However, when you are able, with a bit of sensible advice beforehand, to steer clear of a potentially costly mistake, the monies spent on the advice will look like small potatoes indeed. Like the old Fram oil filter commercials used to say, "Pay me now or pay me later."