DO YOU REALLY WANT YOUR PARTNER'S SPOUSE TO TELL YOU HOW TO RUN YOUR BUSINESS?

(AND OTHER EQUALLY UNPLEASANT SCENARIOS!)

By Attorney Judy Gedge

"I don't trust this guy, Jack, that I'm going into business with so, Judy, I need you to draft a really air-tight agreement that will keep Jack in line."

Thus began a phone conversation with a client many years ago. I had to explain to this client that no legal document, no matter how well-drafted, can protect him against a dishonest partner. So, if a contract can't make the other person honest or ethical, what can it do? A well-drafted governing agreement can create a business that all partners believe is structured fairly and it can create a sold foundation for a successful business. So, what goes into a well-structured partnership agreement? When partners go into business together, I recommend that they deal with the 3 M's.

MONEY. You'll need to clearly identify the financial obligations of each partner. How much will you be required to contribute to the business? How about your partners - are they putting in the same money as you? What will you do if the business needs more money than anticipated? Are your cash reserves adequate? How does the money come 'out' of the business? If there are four owners in this business, will each owner get the exact same money out of the business? What if one owner is actively involved in the business and the other owners are more passive investors? You can, no doubt, see why it's essential to nail these issues down before launching the business. Nothing sours a business deal quicker than a partner who feels that the profits aren't being split fairly.

MANAGEMENT. When a business has only one owner, it's very easy to determine who gets to make all the decisions... the sole owner! But when a business has two or more owners, you'll need to nail down each owner's authority. Let's assume one of your partners wants to lease a new Lexus sedan through the business. Is it okay for him to enter into that business transaction without your approval? That may well be an expenditure that should require the consent of all the owners. Other major transactions, that are defined in the governing agreement, will also require consent of the other owners.

'MOVING ON'. Let's assume you've opened a restaurant with two colleagues. All three of you are actively involved in the business. It's a popular eatery and after two years in business, it's finally turning a nice profit. One of your partners, Bill, informs you that he's ready for a change and will be taking a job out of state as a golf pro. When you recover from the initial shock, you ask yourself what impact Bill's departure will have on the business. Is Bill still entitled to an equal share of the profits? Does Bill still have a vote on business decisions? The answer is......it all depends! A well-structured business partnership will address this type of situation with buy-sell provisions. It might give the remaining owners the right to buy out Bill's interest, possibly at a discount.

An option to buy out a departing owner is also important if a partner dies or becomes disabled. Would you really choose to be in business with your partner's spouse if your partner were to die? If this is not a pretty scenario, then you need to address this up-front in your governing document.

Operating a business with partners can provide tremendous advantages. We can't be expert in everything related to our businesses. Things can work great when owners join together who have complementary skills, a similar business style and similar business ethics. But remember, it's essential that you work through the important structuring issues of your partnership right at the outset. That way, you can help avoid misunderstandings or business disputes later on. A business break-up can be as difficult as a divorce. Agreeing on a method up front to deal with business eventualities can make for a more successful business and much more relaxed business owners!