Thinking of adding a business partner? Here's what you need to know about the "In", the "Out" and the "In-between."

A business partnership is often compared to a marriage and that analogy is especially true when it comes to a business break-up, which can rival any marriage dissolution when it comes to hard feelings, disruption of lives and costs if the partners haven't properly prepared for a partnership separation. If you are starting a business or have an established business and are thinking of adding a business partner, you should consider each stage of your relationship with that partner before you take a step forward into a business "marriage."

The first part is usually the easiest part - the "In" - or what your partner needs to contribute in order to buy-in and what they get in return. Sometimes it is money, sometimes it is services, sometimes it is real estate or other tangible products or things. In return, your new partner expects an ownership percentage reflected usually either in shares of stock or a percentage of the membership interests. You should be clear going in what precisely they will receive and whether future offerings may dilute that percentage. Other matters to discuss as part of the "In" involve any employment arrangement, any status as an officer, manager or membership on the Board of Directors or Governors. Employment issues are extremely significant because minority shareholders in Minnesota will be viewed to have an enhanced status that may make them something other than an "at-will" employee. In my opinion, anytime you bring in a partner to your business that is also an employee, you should make sure they sign an employment agreement to address the issues that arise because of their minority shareholder status.

The last part of the process - the "Out" - is what is addressed in a Buy-sell or Redemption Agreement. Typically that type of agreement will address what happens if the partner leaves the business through employment termination, death or disability, has her interest attached through a bankruptcy, creditor or marriage dissolution process, or simply wants to leave and be bought out by her partners. The time to discuss the "Out" is not when it is about to happen, but at the beginning of the relationship when a discussion about buy-outs is not subject to the emotions that may be associated with the buy-out event. You don't want to be talking to your partner about how you plan to buy him out for the first time when he storms into your office demanding a buy-out because he hasn't been treated in a way that he thinks is fair. You want those decisions to have already been made so that both sides can understand and plan how a split will affect their financial interests. Key points that such an agreement should address should include under what circumstances do the company or remaining partners have (1) the right, (2) the option, or (3) the obligation to buy a partner's interest. The agreement should also address how you determine value with the best scenario being an agreement where value is agreed upon on an annual basis, as well as the terms of any buy-out relative to down-payment, length of buy-out term and interest rate. Keep in mind that in most circumstances a minority owner does not have an automatic right to demand to bought out unless there is an agreement that creates that right.

The middle part of the process - the "In-between" - is the last piece that parties typically address and oftentimes ignore altogether at the start of the partnership. The "In-between" includes the employment agreement for partners but also an understanding of the decision-making power that will apply during the partnership. A healthy partnership decides early on who will make what

decisions, which decisions require unanimous agreement and what process will be used if there is a deadlock on an important decision. Issues such as lending, major contracts, location and real estate purchases, partner compensation and tax payments, employment of family members, offering of additional stock or membership interests should all be considered as part of a control agreement that clearly delineates how decision-making power will be address during the life of the partnership. Typically a Member Control Agreement or a Shareholder Control Agreement is the document that is used to spell out those issues.

A business that has addressed the "In", the "Out" and the "In-between" will have in place the key agreements that make these critical decisions at the start of the partnership. The key is to have those agreements in place before you start your business "marriage" in order to avoid having a Court or someone else decide them for you when time for a split is at hand.