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## **4Ds That Could Destroy Your Business**

Heart attack, car accident, illness, a resignation, family dispute. Most of these unanticipated, but by no means unusual or uncommon events, fall under 'The 4Ds' - Death, Divorce, Disability or Departure. The occurrence of any one of them can instantly throw a business into disarray.

Unpleasant though they are to consider, when one of them befalls the owner of a business that doesn't have a plan in place for dealing with the fallout, then the result can be more than unpleasant – it can be catastrophic. Disorganisation, loss of business opportunities, loss of customer or market share and a decrease in employee morale and productivity are the least of the repercussions. Family or partner discord, heirs left unprovided for and the demise of the business are real possibilities as well.

When Kenneth Wilson, the owner of Wilson Products Inc. died unexpectedly his three daughters found themselves in charge of his US\$12 million aircraft parts business. While all three had grown up around the company they had never been trained to take on the management of the business and no other arrangements to cover a hiatus in personal management by their father had been arranged either. The business was completely vulnerable and, with the aerospace industry also going through rapid change, the business floundered. By 2005 it had to file for bankruptcy. With US\$20 million in orders on the books for work through to 2010, the Wilson's couldn't find a buyer, and the company's assets were auctioned.

Where management knowledge about how the business works is restricted to one person the death of that person leaves the business rudderless. Continuity of management can be maintained only if there has been a long term plan for training up family into their eventual managerial responsibilities or using a board of advisors that has had a long term association with the business and can steer it until more permanent arrangements are made.

Death can leave heirs financially unprotected. Will business partners pay the owner's heirs the value of their interest in the business? Maybe. But not in the case of Terri Gettman. When her father died without any written plan outlining what was to happen to his minority stake in a paper making machinery manufacturing business, it was an opportunity for the other partners to cut the family out of the business without due recompense.

Death entails payment of estate taxes on the value of a business. If they haven't been planned for it can involve hurriedly trying to raise finance to cover them. But in many instances banks aren't prepared to come to the party when the business has just lost its major asset – the owner. The business may have to be sold simply to pay its tax liability.

Rarely do you see divorce listed as a cause of business bankruptcy, but with nearly half of all marriages ending in divorce, in circumstances that frequently turn ugly, subsequent litigation has destroyed many privately held businesses. In the absence of any type of divorce planning, such as a buy-sell agreement, all assets may be legally required to be divided 50-50. To come up with the cash to pay their divorce settlement owners have had to sell their business. That may not be the worst part of the story. In a court enforced sale the owner may have to accept a discount price. In one case, with offers from two potential buyers to choose between, the owner was forced to accept the lower bid because it was for cash on the spot. The judge agreed with his ex-wife and her lawyer, who argued that it wasn't fair for her to have to accept whatever financial risk might be attached to the higher bid because, unfortunately, it had provisions for an extended payout.

Disability and departure are equally problematic for the survival of a business that hasn't developed a contingency plan to handle them. Partners can decide to leave for a number of reasons. They may decide to leave for another opportunity or simply to take life easier. But the same issues remain. Who is going to do the work? What is owed the leaving partner? Where is the money coming from? Both disability and departure can bring huge financial and emotional pressures in their train.

### **Planning for the 4Ds**

Emotionally charged as it may be to contemplate the 4Ds, planning for them should be an integral part of overall business and personal financial planning for business owners.

The last thing you want to happen is to be forced to sell your business in a hurry because of unforeseen circumstances or to leave the business in a dire position when you die. Failing to consider unpleasant circumstances or to plan for dealing with their consequences is a sure way to put the future of the business and the welfare of the family stakeholders at risk. An estate plan, a buy-sell agreement, a succession plan, a pre-nuptial agreement can each feed into an overall transition plan that protects the business and its dependents in the eventuality of one of the 4Ds occurring to the owner.

The key to avoiding difficult situations arising from the 4Ds is to start succession planning as early as possible, revisiting the plans on a regular basis and dealing with ownership and management issues separately.

### **Don't Lose Your Business Secrets Along With Your Employee**

Your top salesperson has just resigned to start their own business. Next you hear she's been in contact with the customers she dealt with when she worked for you – your customers! And the next you know some of those customers are switching to her firm.

The danger presented by ex-employees extends further than the possibility that they might hijack your customers. They can take knowledge of your proprietary processes and other trade secrets to use on their own behalf or that of their next employer. That means your competitive edge may walk out the door with them.

A non-compete agreement (NCA) is a way of protecting your business' competitive edge by preventing employees from using your proprietary information against you when they leave

you. Any employee likely to come in contact with valuable business knowledge should be required to sign a non-compete agreement.

### **Developing a legally defensible NCA**

NCAs are court enforceable only when they are constructed properly. An NCA is likely to be most defensible in court when it conforms to generally accepted practice. This involves writing it up so that it defines limitations that apply to an ex-employee using the information they have about your business that can be considered both fair and specific.

To be fair and specific an NCA should cover off three areas in particular and place reasonable limitations around each:

- Scope,
- Time and
- Geographical area

Scope refers to the items that are covered by the non-compete agreement. While many things can be protected including procedures, techniques and client or customer lists, a court will need to be convinced it is in fact something vital to the operation of your business. You must be careful about defining the scope and demonstrate by other measures that you consider the item is important - mark documents that include the information 'confidential', lock them up, put a computer access password on them, limit the number of people who have access to them. Courts won't prevent employees from using information that isn't proprietary or treated as confidential by the business itself.

An NCA can't be applied for an indefinite time but deciding what sort of time limit a court will find reasonable can be an interesting exercise. Try to work out some logical relationship between the information you wish to protect and the enforcement period you apply in the NCA. In the case of employees who are in a position to develop close relationships with customers the danger of them poaching is significant so the employer, who is considered to own that relationship, should protect it with a non-compete agreement. However, the non-compete period that can be applied is not likely to be legally binding beyond the time it would reasonably take to get a new employee up and running and with their own track record so that a customer wouldn't see any difference between the new person and the old one. It's a mistake to impose time restrictions which have no basis in how long the item being protected will remain valuable.

A non-compete agreement may also need to cover a geographical area such as your sales territory or distribution network. Again, care is needed in defining the extent of your restriction in terms of business logic. Usually it must conform to the area in which you operate. Courts won't agree with a geographic prohibition that is broader than necessary.

### **Fairness to the employee**

Courts are more likely to accept your right to impose an NCA when it can be demonstrated that the employee knew they were subject to one and had openly agreed to abide by its terms. The fact that they will be subject to an NCA should be mentioned as early as interview time to job applicants and they should be provided with a copy to review before they accept an offer of hire. The same applies to current employees being offered a move that puts them in contact with protected information and requires them to sign an NCA. Give them a chance to consult legal counsel and ask you questions about it.

## Take legal advice

An NCA can be a valuable weapon in defending your competitive edge but it has to be drafted according to law.

Courts in general try to balance your right to protect your trade secrets with the employee's right to make a living. While some cases are quite clear cut – for example an employee you trained in general laboratory techniques can get a job as a lab technician elsewhere but they can't use your patented formulas – others are not.

When it comes to NCAs the advice and assistance of a registered lawyer is a must in drafting a defensible form of agreement.

## Accountants Do A Lot More Than Count Beans

Few business owners appreciate the wide and deep knowledge that accountants have of their business and of business management in general. For one thing, their training as an accountant provided theoretical background about how businesses work. Then, in practice they get to deal with clients from a large number of diverse business types and industries and learn a lot about how businesses actually run and the real problems business owners face.

Many of us undergo an annual checkup with our doctor. As a result we expect to be given a report on how healthy we are. If a problem is diagnosed and some remedy suggested chances are we take the advice and act on it. After all, he's a professional and our health is really important to us.

How many of us use the professional talents of our accountant though? We go along for the annual 'checkup' to get our accounts prepared and tax return compiled. Those figures to an accountant are like an angiogram to a doctor – they give a picture that can be 'read' to show how your business is performing, where there may be problems and where it could be improved. Failing to discuss your financial results in detail with your accountant is like walking out of the doctor's surgery without getting the full diagnosis of your health problem.

### What do accountants *really* do?

Here's a brief rundown of some of the ways in which your accountant is able to offer advice and practical suggestions to improve your business.

- **Tax planning:** Beyond simply preparing tax returns accountants advise on the best tax structure to minimise your obligations on a year by year basis and on estate planning to ensure your heirs receive what you want them to without the involvement of legal complications and tax incidence.
- **Business advice:** Increasingly, accountants are being drawn into business advisory work by their clients who are seeking to improve the performance of their business and need specific solutions. Accountants can advise on matters ranging from setting up internal controls to protect against fraud, to strategic planning to improve competitiveness, to coordinating the sale of a business, to developing the succession plan to transition the firm to the next generation of owner/managers. Some take up positions on the advisory boards of go-ahead businesses who want a source of objective and competent advice added to their planning.
- **Management accounts preparation:** Businesses should prepare management accounts at least once a quarter to ensure they are on track with their business plan. Compiled regularly and systematically the information in management reports can be analysed to

reveal warning signs of developing problems in operational and financial areas. Your accountant can provide advice on how to manage around them as well.

- **Personal finance advice:** Your accountant understands that for a business person their personal finances are integrally linked to their business finances and will offer advice on both fronts. For example, while serving as your small business accountant they might assist you in developing a retirement plan or an estate plan. This planning will ultimately leave you and your dependants in a stronger financial position when you eventually exit your business.
- **Information technology applications:** Many accountants today are also very savvy when it comes to SME computing technology and solutions. Not just in advising which accounting package would be right for you but in such diverse areas as ecommerce and data security.

### **Don't make the mistake of using your accountant only at tax time**

A good accountant can provide a wide range of business improvement services that include both preventive and restorative actions. If you are using your accountant solely for their tax service, then you aren't making use of them in an area where they can offer real value – small business management advice.

## **6 Writing Tips For A Winning Proposal**

Many business owners are reluctant to respond to an advertised request for proposal (RFP) or to write up and send off unsolicited proposals even though a successful bid could mean good business. Their reluctance may be strategy based – if we win this will it overstretch us and drain our cash and time resources? But sometimes it arises from the simple feeling that “*I don't think I have the skill to write up a proposal*”. Here's 6 tips on how to go about writing a proposal that will make it easy for the recipient to grasp what you offer and decide if it's for them or not.

1. **Cover the basics the recipient will want to know:** A proposal must include clear statements on WHAT you are proposing, on HOW you plan to do it, on WHEN you plan to do it, and on HOW MUCH it is going to cost. After you have written your proposal check back and ensure they are all there and easily identifiable by the recipient.
2. **Make the title count:** Use the title to sell your solution by showing how it answers to the real needs of the recipient – ‘*Vandal Proof Letterboxes For Public Housing Estate*’. That may take some reading between the lines – RFPs are likely to stress features whereas you need to point out the benefits.
3. **Include an abstract of your solution:** An abstract is a condensed version of the whole response placed at the beginning of the proposal. It summarizes the content and highlights the major points you want to make. Your proposal may be one among many so getting the reader's attention early is critical. A good abstract that has no superfluous information but briefly covers the What, How, When and How Much can get your response on the short list for later detailed attention.
4. **Present information logically/highlight the important points:** Proposals need to be both informative and persuasive. The best way to persuade someone is to present a logically built up case that amounts to demonstrating why yours is the best solution. Arrange the pieces of evidence so that the most important are at the beginning and work down to the least important. Bullet points, boldface type, and coloured font can all be used to highlight the most important information so that even in skimming the document these

parts stand out. Charts, tables, graphs and illustrations make hard to grasp details easier to comprehend and replace paragraphs of text.

5. Write for the audience: A winning business proposal is all about communication. Every industry has its own particular jargon. The words, terms and expressions used by engineers are different to those used in the medical profession. The proposal needs to use the terms that will be understood by the particular audience.
6. Make it look professional: Your proposal should look like a serious document. Design a title page that includes all the relevant information (title of the proposal, the firm it is for, your company name and address, the date, and your copyright symbol) and also a relevant image of some sort. Have it printed on good quality paper by laser printer and bound in some way. The whole job can be done cheaply and professionally by a print shop.

## Regular Pieces

### How To Make The Most Of Your Newsletter

Be sure to read each article with the mindset 'How could this apply to our business.' Thinking of it that way will guarantee that you get value. Better yet, take notes as you read and commit to having the ideas implemented by the time the next edition arrives. Also, make copies for each team member. To really make sure something positive happens, work with your business development specialist to talk your team through the ideas and how to set a schedule for getting them implemented. We're here to help you get started.

### Memorable Quotation

*"There is only one boss. The customer. And he can fire everybody in the company, from the chairman on down, simply by spending his money somewhere else" - Sam Walton*

### An Important Message

While every effort has been made to provide valuable, useful information in this publication, this firm and any related suppliers or associated companies accept no responsibility or any form of liability from reliance upon or use of its contents. Any suggestions should be considered carefully within your own particular circumstances, as they are intended as general information only.

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