

**ADR Insights on Business Divorces: Make a New Plan, Stan (Part 2 of 9)**

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*You just slip out the back, Jack  
Make a new plan, Stan  
You don't need to be coy, Roy  
Just get yourself free.*

(Paul Simon's 50 Ways to Leave Your Lover)  
(Written by Paul Simon)

This is the second in the “*Breaking up is Hard to Do*” nine-part series exploring dispute resolution for business divorces.

Make a new plan.

When starting a new business, business partners are in the honeymoon phase. Frequently, they have tunnel vision and are focused solely on building their business. While building the business is mission-critical, equally important is advance planning to minimize future disputes and disruptions.

At inception, the co-owner relationship is at its peak and there is no history of bad experiences or pent-up negative emotions. While it may be hard to imagine a scenario where they disagree or face challenges, co-owners need to prepare on the front end for the disputes that may arise on the back end. In addition to considering future upside, new business partners should discuss goals, inflection points, worst-case scenarios, and potential pitfalls.

Here is a non-exhaustive list of topics new business partners should explore:

- Ownership structure,
- Financial and performance goals,
- Short and long-term objectives,
- Exit strategy and options,
- Capital contributions and capital accounts,
- Compensation,
- Noncompete agreements,



- Fiduciary duties,
- Succession planning (both long-term and in the event of an emergency),
- Access to books and records,
- Audit rights,
- Checks and balances,
- Potential dissolution or liquidation,
- Buy-sell provisions (including triggers, mechanics, and valuation methods and procedures),
- Control features (including voting requirements and breaking deadlocks)
- General corporate governance, and
- Dispute resolution.

The best method to resolve business disputes is to avoid them altogether through careful consideration and planning at the beginning. As Benjamin Franklin once said, “By failing to prepare, you are preparing to fail.” Instead of preparing to fail, at formation, co-owners should make a new plan for the future.

*Disclaimer: “You’re So Vain, You Probably Think This Song is About You” (written and sung by Clary Simon). Please note that this series is drawn from over 30 years of experience as counsel or neutral in business separations, reconciliations, and divorces. Nothing in this series is based on any specific dispute in which I have been involved. In addition, nothing contained herein constitutes legal advice nor does it create a professional relationship.*