



SOLVING DISPUTES AMONG BUSINESS PARTNERS AND OWNERS

## Common Ways to Resolve Disputes and Deadlocks in a 50/50 Business

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At some point in a business relationship, differences of opinion are likely to arise. In businesses where there are equal owners of the company, it is important to ensure that there are carefully drafted governing documents or a standalone buy/sell agreement that detail the process for resolving a conflict or impasse. 50/50 business owners should review the company's operating agreement, shareholders agreement, or partnership agreement to determine the process for resolving that impasse.

Owners should consider outlining the types of disputes and the different procedures for resolving those disputes in their governing documents. Having these discussions early in the process of setting up a business may help the owners resolve disputes quickly and effectively.

Some common mechanisms for resolving such standoffs include the following (in order of escalation):

- ▶ **Meetings of the owners and mediation.** Often, governing documents will require multiple meetings of the owners or mediation to allow further discussion and de-escalation before triggering a formal deadlock resolution process. In mediation, the owners take their deadlock before a mediator but retain the right to decide whether to settle the dispute. The mediator has no power to impose a resolution other than the power of persuasion.
- ▶ **Independent third-party tie-breaker swing vote.** Another dispute resolution mechanism permits the owners to appoint a third party to cast the tiebreaking vote.
- ▶ **Arbitration.** In arbitration, the owners take their deadlock before an arbitrator. Owners can draft their governing documents to include provisions that establish the arbitration venue, number of arbitrators, and cost-sharing responsibility. An arbitration will resolve the dispute, but arbitration can be expensive and time-consuming — sometimes even as much as a public lawsuit. Moreover, empowering an arbitrator to resolve a dispute effectively delegates important authority to a third party who lacks experience with the company.

When a resolution cannot be achieved, the parties may need to consider divorce measures for the withdrawal of an owner. Some common divorce provisions in governing documents or in a standalone buy/sell agreement include the following:

- ▶ **Put/call rights.** A put right is a legal contractual obligation of one owner to buy out the other owner when the offeror owner offers equity for sale to the company or the other owner. A call right is a legal obligation of an owner to sell equity when the company or other owner offers to buy out the seller owner.
- ▶ **Russian roulette.** Each owner has the right to offer equity to the other owner for purchase at a specified price. The recipient of an offer must choose either to buy or to sell to the offeror at the offered price.
- ▶ **Texas shootout.** Similar to the Russian roulette method, one owner offers 50 percent equity for sale to the other owner at a specified price. The other owner can respond by offering 50 percent equity for sale at a higher price. The bid can go back and forth until the "auction" ends with the highest bid.

Alternatively, the owners may decide to dissolve the company. Dissolving the company, however, should be an act of last resort. Dissolution terminates the business and destroys any value that the business has as a going concern. If the owners decide to dissolve the company, they should review the laws and the process for dissolution in the jurisdiction where the entity was formed, which will include certain requirements such as obtaining the consent of the owners, filing articles of dissolution, making provisions for debts and creditors of the company, and making provisions for the distribution of assets of the company to the owners.

Give careful consideration when drafting any dispute resolution or divorce provision. A sparsely worded provision can lead to further hard feelings and mistrust between the owners and lengthy delays in resolving the impasse, which may harm the business.

If owners find themselves in a deadlock, they should not only work through the resolution process in accordance with the terms of the governing documents, but also consider the best interests of the company and act professionally. In these situations, the company needs to ensure that owners have equal access to books and records.

Lastly, owners should be careful when engaging with the company's legal counsel and should also consider whether and when to engage counsel to represent them in their individual capacities. As we have [previously explained](#), emails between one owner and the company's attorney may not be protected from disclosure to the other owner. We suggest that owners engage the company's counsel early in the process to receive guidance both on the resolution process and regarding situations in which each owner should consider engaging individual counsel.

## About the Author



### Hugo Gallegos

Hugo represents public and private companies, private equity funds, portfolio companies, and investors in a variety of complex business transactions. He has experience assisting clients with mergers and acquisitions, private equity transactions, corporate governance issues, and general corporate matters. His representative clients span a broad range of industries and sectors.