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Partnerships and Shotguns

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As I have stated before, I am not a big fan of partnerships but maybe that's because I'm prejudiced by my experience with poor partnership agreements. Only recently I've had to deal with a couple of partnerships in trouble – mostly because of the poor to impossible partnership agreements. If the partnership is in trouble there should be a provision to have it dissolved in a fair and amicable way.

I feel this can be arranged by a well written "shotgun clause" that would be valid in a number of potential changes in partnership. A "shotgun" is an escape hatch mechanism. In a shotgun arrangement, when one shareholder makes an offer, the shareholder receiving the offer can either accept or not. If the offer is not accepted, then the shareholder who turns down the offer, in turn, must buy the other partner's interest for the same terms as the original offer. It is harsh, but it provides protection for both parties and a mechanism to exit as well as to determine price and terms.

In any separation there should be provisions for unequal size partnerships where one partner's practice is small and the other's considerably larger. The concept of a single offer fixed value to accept or turn the shotgun around would not be fair to both parties. There should be recognition that the value of one practice needs a modifying factor to reflect the difference in values of the partners. To think that one partner sets a price and the other partner must accept or offer the same price for his partner's practice is not fair. Potentially, an offer as a percentage of last years gross would be fairer; i.e., 90% of the other partners last years gross (on $500,000 gross the other partner would offer 90% or $450,000). But if the other party wished to pick up and reverse the shotgun he would have to pay 90% of his partners gross (say 90% of $700,000 = $630,000). The $630,000 reverse offer would be a fairer relationship if the partnership is going to be dissolved.

You would be surprised how many partnership agreements do not even have a shotgun clause. In fact you would be surprised how many partnerships do not even have an agreement with provisions for separation. And I've even dealt with a few partnerships where a Partnership Agreement doesn't even exist. Good shotgun clauses make fairer relationships in a separation situation.

Professional Practice Sales drafts many agreements, such as Agreement of Purchase and Sale or Associate Agreements and we always recommend that all new partnership or cost- share agreements be drafted by an experienced lawyer specializing in dentists' legal issues. It should be unique to the two or more partners who are forming the partnership or cost-share. The agreement should lay out a resolution for as many potential changes as possible with a fair outcome. There should be a provision for such things as altering the profit sharing arrangement when circumstances between the partners change – such as one doctor wishing to cut back a day or two a week. Partners should review their agreement about every five years to ensure that it is still as valid as when they formed the partnership.

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