

## Cannabusiness Divorces: Seeing Green, Not Red

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Very few divorces end with a clear “winner” as famously [observed](#) by the late, great Jerry Reed in “She Got the Goldmine (I Got the Shaft).” That is as true in a personal divorce as it is a “business divorce.”

Business divorce disputes take place between business majority owners and minority investors who may be cofounders of a company, family members, or longtime friends. As with a personal divorce, conflicts between those who hold substantial ownership stakes in private companies can be complex, personal, and highly contentious.

A business divorce can result from a long-held disagreement between business partners or it can be triggered by other factors, including a change in leadership, a major change in the company’s financial performance, or an external problem that threatens the company’s continued success. In many cases, the potential exists for a conflict to escalate between business partners to such an extent that it becomes difficult for them to agree on a pragmatic resolution.

Adding to the complexity, there are different types of business entities, and the laws regarding their governance and operation can differ greatly. These complexities are magnified in the cannabis industry for a number of reasons.

First, many cannabis agreements are verbal, reduced to some rudimentary writing, or both. And oftentimes the paperwork, if any, is not prepared by an attorney. Invariably, then, when a dispute arises there are often vague terms and disagreements about the intent of the parties. This uncertainty makes it difficult for even the most well-intentioned of parties to resolve disputes efficiently and often leads to litigation — something few cannabis companies are well-positioned to withstand financially.

Second, the cannabis market has not yet fully matured, which makes it particularly vulnerable to ever-evolving market conditions. There are more participants in the market than necessary, but not enough responsible and savvy participants. Thus, many businesses fail for a variety of reasons. Further, and this is particularly true of the hemp industry, changes in supplies of raw materials can cause dramatic swings in revenue versus projections.

Third, many cannabis investors do not fully appreciate the legal and regulatory risks inherent to any investment in the industry. For example, an investor may think that smokable flower is a good investment, and that may be true for a time. But what if the state legislature suddenly bans smokable

flower in the state? That act could take an otherwise profitable investment and render it essentially worthless overnight.

All of these factors contribute to a sort of “Wild West” mentality that had been a hallmark of the legal cannabis industry since its re-emergence in the United States more than two decades ago. And while that mentality has fueled a generation of inspiration and ingenuity, the legal side of the business has not kept pace with the creative side -- hence the emergence of cannabis business divorces.

Prudent majority owners and minority investors will take the following steps when entering into a cannabis business relationship:

1. Document every aspect of the transaction in writing that both parties can understand. And though it may seem a shameless plug, both parties would do well to retain attorneys to assist in this process. An ounce of prevention here can be worth a pound of cure.
2. If you are a majority owner, make sure you disclose in writing all possible risks to all potential investors so that, in the event the venture goes south, the investors cannot come back and say they did not understand the risks. If you are an investor, take the time to educate yourself about the cannabis industry and the potential investment so that you'll understand what questions to ask and the likely risks before investing your money. Again, it helps to engage professionals familiar with the cannabis industry.
3. **Get a “prenup.”** Include provisions in your legal agreements that make clear what is to happen in the event of a business divorce. Force yourself to consider what would be fair in the event one or more parties wishes to exit the relationship. It is far easier to do this on the front end when the parties are in alignment than after a relationship has become frayed.

These tips won't guarantee a happy marriage in perpetuity, but hopefully they'll increase the chances that any split will be amicable.

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