

What 1000 business conflicts taught lawyer Scott Friedman



No one should try to mediate their own business conflict because perspectives will not change without an independent third party by **Scott Friedman**

If you are serious about resolving conflict between owners in a business don't think about the issue in terms of winners or losers. If things escalate to the level of a personal feud, there will be no winners – just the obliteration of the business they've worked hard to build.

I've seen more than a thousand conflicts between business owners who are, often enough, members of the same family. Private businesses make up around 95 per cent of all businesses in Australia, and around 70 per cent of those have intergenerational family relationships, providing enormous scope for seriously destructive conflict.

Causes of Conflict

Conflicts arise in circumstances as different as the businesses that create them.



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Sometimes a majority have a shared concern that one person is not suited to the business any longer. They often believe that person is threatening their commercial survival or just not doing their share of the heavy lifting and they are looking to move this person out. The person being punted often doesn't see themselves at fault and it takes time (and usually independent advice) to understand that things won't improve until they make the decision to leave.

It's all too human and perfectly understandable. Arguments, slights and put downs generate hurt feelings. Everyone digs in, hoping to survive, for years sometimes. I've seen business locked in silent lethal disagreement, each person rationalising behaviour believing their own perspective as right and hoping that somehow something will someday change.

DIY dispute resolution is doomed

Eventually, when it's obvious to all that a business is suffering and they have to act, business owners will often meet to try to resolve the issue themselves. The cliché might hold that dirty laundry should be washed in private, but this approach is doomed to fail. Day to day, we can often resolve problems quickly, but when our identity, income security and the business and family we love are involved, it's more complicated.

No one should try to mediate their own business conflict because perspectives will not change without an independent third party. In a conflict, all perspectives are valid. There are owners who tend to dominate and others who resent this and only an independent mediator can help everyone feel heard.

Prevention is the best cure

If they haven't already, co-owners of a company should sign a shareholder's agreement (or unit-holder's agreement, if their business is underpinned by a unit trust). At a minimum, they should allow a majority to ask a minority to leave with a payout to the value of their shares.

Everyone should also recognise that we all overvalue a business we love, and be aware that there are plenty of forensic accountants who will support that illusion, arriving at valuations that differ by millions of dollars.

Some might think it counterintuitive that a lawyer would rather avoid court, but, over the years, I've seen much greater benefits when negotiations enable a business to survive. Taking disputes to court is a blunt instrument where everyone loses to some degree.

If owners are mediating because they've been dragged into court or they have been physically locked out of their office building, it's time to acknowledge that it is best to part ways. Again, resolving this has nothing to do with winning or losing, it is a process of carefully getting everyone to acknowledge their involvement and exposure until they are prepared to end the conflict.

Scott Freidman is a partner with the law firm Harris Freidman. He has been mediating conflicts between business owners for over 25 years.