

Prepare For the 4 D's

It happens all the time. We start a business, and we dream about how well it will do, and how successful we and the business will be.

And then an unanticipated disaster strikes with terrifying results.

Here are four common disasters we will all face, and some practical steps we can all take to prevent or minimize the damage.

Death

Death, of course, is inescapable for us all. But a business often has a life of its own, even though we identify the business with ourselves.

If the business is incorporated, it most definitely has a life apart from its owner(s). It also has assets, liabilities, and a cash flow.

Protections are required, and I'm not talking about life insurance, even though insurance is advisable.

Disability

In some ways disability, particularly if it is long-term, is worse than nature.

The protective step(s) are the same as for death. And again, I'm not talking about insurance.

Divorce

So you start a business with your spouse, and to be fair about it, you divide the ownership of your business equally. You each own 50% of the stock if it is a corporation, or 50% of the partnership interest if it's a partnership.

And later on the marriage ends in a bitterly contested divorce, as so many divorces end.

Guess who you are 50-50 partners with?

Dissolution

Sooner or later, and hopefully later, the business will close.

The owners no longer want to operate the business, and just shut it down.

Or better, they sell the Business, hopefully at a



business, hopefully at a profit.

Technically, in the small business world, we don't sell the "business". We sell the assets of the business, and the new owner starts a new company with the assets of the company just purchased.

In any event, dissolving a company means liquidating the liabilities (whatever the company owes), disposing of the assets (whatever it owns), and distributing what's left over to the owner.

In some cases, dissolution can be tricky, can take much longer than you would ever imagine, and cost more than you would ever dream.

We can just about count on two of the 4 D's to strike us sooner or later. We will all die, and we will all leave—and probably close—our business.

Let's not even talk about divorce, but let's also recognize that disability in some form is likely to strike us all at some point in our lives.

If you own or control the business, isn't it prudent to take some reasonable and low-cost steps to protect your investment?

Recognize also that you're not only protecting your own investment—you're also protecting the investment of all those who depend on you.

You're protecting your customers, your suppliers, and your employees.

Protection #1

A good place to start is to recognize that your business in most cases is a separate person under the law.

And because it's a separate person, it needs a will. A will for a business is not called a will, of course.

It's usually called a Partnership Agreement (if a partnership), or an Operating Agreement (if a corporation).

You probably will never need a valid written agreement until one or more of the

4 D's strike, and then it will be too late.

And will you, and a bunch of other people, ever wish you had such an agreement!

Here's a real-life example: your business is about to negotiate a new contract, or renegotiate a loan agreement, or even write a check.

But the day before, the sole owner is struck by death or disability. Absent a valid Operating or Partnership Agreement, there is no one empowered to legally bind the company.

A good friend of mine didn't have such an Agreement, and a highly profitable company he had built over 25 years disappeared in 6 months.

He was struck by Disability, and with no one to act in his stead, lost everything—some \$3,000,000.

He ended his life in a low-end nursing home living on Medicaid, and had been declared bankrupt.

Protection #2

The second thing you do is develop a succession plan. Start developing people who can pitch in and take over, at least for a while. After all, the Agreement will give someone the authority to sell the business if necessary, but it can be sold only if it is a going concern.

And while it may not have your unique "flavor", it will continue, and you will have protected your investment as well as the investment of everyone else who has come to believe in and rely on you.

