

Beware the Overripe Business Plan

Much ink has been spilled explaining the need for properly-drafted business documents to plan for the future of your company, as well as provide continuity should some unexpected burden befall one of the owners. This advice is sound, the benefits are obvious and yet many people still choose to ignore it.

This article focuses on a much smaller (yet still significant) group of business owners. Those who are operating under a false sense of security after having created such documents, but who have failed to review and update them as necessary. These business owners are often lulled into a false sense of security by their decision to establish these documents when the company was founded, or some time shortly thereafter, but have left the documents in the company's minute book to do little more than collect dust. These "overripe" documents can be the source of many unexpected challenges.

In reviewing these documents, I frequently encounter outdated language that takes many business owners by surprise. In the case of an outdated buy-sell agreement, this can create buyout obligations for the company or the continuing owners that are no longer appropriate and are little more than unfunded liabilities of the company that can pop up at the most inopportune time.

Think back to your top five priorities in your life when you started your business. If three or more of those top priorities have changed (or if you can't remember what they were) odds are the interests your corporate documents were designed to protect have changed as well.

People often ask me how long these documents can be relied upon after they are

created, or how they will know when it is time to update their documents. Much like buying produce, the best way to determine suitability is by conducting a close inspection. An annual review of your documents is advisable. But if that is impractical, the following list identifies circumstances where a thorough review of your existing documents should be completed immediately:

- Addition or reduction of owners;
- Creation of new or restructured debt obligations (whether or not the obligations are personal to the owners);
- Occurrence of any major life events in the life of an owner (e.g., births, deaths, marriages, divorces); and,
- Passage of time; while an annual review is best, if circumstances only permit a thorough review once every two to five years, you should have a better handle on the documents than many business owners.

While the cost of updating your documents can be expensive, it is meager compared to the financial burden that could be created if you are forced into honoring an outdated provision in your dusty old documents.

The good news is that well drafted corporate documents have a lot longer shelf life than fresh produce. However, once they go bad they are almost certain to cause you twice the indigestion.



- Aaron Harrison, JD