

Business Partners Need Mediation – Before They Know It

By Kevin Raum & David Gage, PhD

The media is littered with stories of business partner and family business disasters. “If it bleeds, it leads,” as they say. Despite these unfortunate stories, thousands of entrepreneurs join forces every year, often against the advice of their trusted advisers, family, and friends, who’ve seen many partnerships end badly.

The lure of being partners is compelling. Research by the Bureau of Economic Research has shown that having partners creates tremendous advantages over going solo. One recent study found that technology start-ups founded by co-owners were five times more likely to reach commercialization than businesses run by solo entrepreneurs. Amazingly, they also produced average revenues close to ten times greater! A study from Marquette University found that 96% of “hyper-growth” companies had partners – not lone entrepreneurs – at the helm.

Studies like these reinforce what we anecdotally and intuitively know to be true: two (or more) heads are better than one. With partners, you get more of everything: skills, knowledge, experience, financial capital, creativity, connections, enthusiasm, energy, etc. So why wouldn’t every entrepreneur find a partner before launching the next cannot-fail company? Because partnerships do fail. More fail than succeed, unfortunately.

Why Partnerships Fail So Often

When they work, the synergy of successful partnerships often produces stellar results. But when they fail, they often fail dramatically with significant fallout: acrimonious relationships, legal fees, disgruntled employees, employee layoffs, business disruption or dissolution.

Unquestionably, there is a dark side to partnership, which begs the question: Why is it so hard for partners to stay together? Is it personality differences? Personal value conflicts? Greed? Turf battles? Unmet expectations? The answer to all of these questions is, “Yes.”

The underlying reason why most partners fail, however, is because of a lack of serious planning for the partnership. The seeds of conflict are sown when partners are starting up or when they are in some type of partner transition. Entrepreneurs will plan their businesses to a great degree but often fail to see that they are missing the partner side of their planning.

It’s as if partners turn a blind eye to the fact that they are partners. They’ve got a business idea, and they’re ready to fly with it. Most entrepreneurs are people of action. They want to get going, and there are myriad things to

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focus on (e.g., the business plan, funding, space, product development, marketing, and hiring). Focusing on the partnership is not usually one of them. Many partners have the Pollyannaish idea that if they've gotten along this long, they'll always get along, or they will say, "We'll deal with it if something comes up."

Some co-founders believe if they pay a lawyer for legal documents, they've done everything they need to do and are covered if problems arise. But they're not. In fact, legal documents give people a false sense of security that they've done all the partner planning they need to do. Two physicians called us once, at each other's throats, saying, "We have our LLC documents, but they don't say anything about how we unwind if we run out of money."

The partnership itself requires almost as much attention and energy as the business. All business partnerships are complex. Other than family relationships, relationships with partners are about the most important and complex that we have, which leads many business partners to say, "It's just like a marriage," but quickly add, "except I spend more time with my business partner than my spouse!"

One final reason why partners don't think about the partner side of planning is that no one is taught how to start a business with partners – not MBAs, not doctors, not even attorneys. Partners usually know a lot about the business they're getting into, but they're not partner experts. Strangely, even business incubators ignore the partner side of entrepreneurship when they mentor start-ups. Partners need to know more about having partners.

Focusing on Conflict Prevention with Partners

Having focused for years on mediating partner disputes, we know now that most partner conflict is preventable. There are recurring patterns in partner disputes. While each case is different, the partner issues are similar whether dealing with a company with revenues of \$100,000 or \$1 billion. Issues among family partners are strikingly similar to non-family partners, except family members drag extra baggage with them going back to childhood.

The key prevention questions are: What topics do partners (new or existing) need to understand, and what should they discuss, negotiate and agree upon if they want to improve their chance of success and minimize the likelihood of conflict?

Some cases revolve around interpersonal issues and some around business

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issues. Some are a complex mix of the two. The interpersonal issues include values, personalities, fairness, power struggles, and dealing with conflict. The business issues include business direction, roles, turf battles, authority, money, decision-making, equity, and governance.

Besides interpersonal and business issues, though, partner planning should consider the future of the partnership. There are four major topics: defining expectations, scenario planning, agreeing on how to deal with conflicts, and planning for the partnership transitions.

Process as Well as Content

More than just understanding the issues they need to agree on, partners also need a process to reach and document their understandings and agreements. The process is critical because partnership issues are inherently complex and so much is at stake. To help partners with a reliable process, our firm created a workbook that guides people through six steps:

- The parties need to learn about the issues related to being co-owners.
- Separately, each person needs to think through and write down his or her thoughts, needs, and interests.
- They then come together, share their views, and negotiate agreements on all of the topics.
- Their understandings, intentions, and agreements are memorialized in a partnership charter.
- They review their charter with their respective attorneys, get feedback, and fine-tune their agreements or understandings if necessary.
- They share their charter with a neutral attorney who uses it to draft highly customized, appropriate legal documents.

Most partners seem to easily understand that the process is designed to end with legal documents, not begin with them. First, they have to clarify what they want for themselves, then an attorney can use that information to create documents that fit their needs.

By design, a partnership charter is much broader than shareholder or operating agreements. It is meant to serve as a guide for how partners will operate day-to-day from inception to exit. It's meant to help them get along, support one another, and not step on each other's toes. Just because prospective partners were best friends or siblings doesn't mean they know how to be business partners.

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Is It Negotiation or Mediation?

To have the best chance of successfully navigating these complex and sensitive partnership issues, we recommend people have a mediator, or co-mediators, assist them. About two-thirds of the people who contact us have us assist them by guiding them through the process, coaching them on the issues, and mediating their differences. They usually have us draft the charter as well. For various reasons, the other third choose to use the workbook on their own. It walks them through the preparation and write-up steps, but they must negotiate the issues on their own and write their own charter. As part of this option, we review their document and provide written feedback. The advantage for them is having a structured process that gives them confidence they are hitting all of the bases and getting feedback on their partner arrangement.

Most potential business partners seem to appreciate that while they may not be experiencing any overt conflict, they don't know what they don't know. They would rather mediate sooner, when they're getting along well, than later when they run into problems. They also seem to recognize that engaging in conversations about personalities, compensation, or the division of equity, for example, may stretch their communication and negotiation skills beyond their comfort zone. Many are eager to have a third-party who knows the ins and outs of partnership assist them in their negotiations. Another interesting choice people have is whether to use one or two mediators. Because the complexity of partner negotiations mushrooms when there are three or more partners, we strongly advise people in such situations to use two mediators with different areas of expertise.

We also recommend co-mediators in situations where the partners wanting to create a charter are already experiencing some conflict. One challenging issue for partners when they are starting out or adding additional partners is how to divide interests in the company. (Conflicts over percentages are not surprising given the fact that there is little written guidance available for dividing partnership equity.) When partners are already experiencing some conflict, we routinely recommend co-mediators, and unless financial resources are a critical issue, partners more often than not agree to use a co-mediation team.

Another aspect of the process is the structure of the meetings. We often recommend people dedicate two or three days to a partnership charter retreat at an off-site location to focus solely on the issues related to co-owning and co-managing their business. These negotiations are not

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something that can be done effectively an hour or two at a time.

Partners should be cautioned against focusing on the business as opposed to the partnership during their retreat, except to ensure that they have the same vision and reasonably similar expectations for matters like how they will grow the business, manage their employees, and control expenses. Some partners find it easier to slip into discussing the business than staying focused on themselves. For example, it's far easier to talk about how they'll hold their employees accountable than how they'll hold one another accountable.

Conclusion

When you think about how much is riding on the quality of the relationship among co-owners, it is amazing that more attention isn't given to their partner relationship. Business partners are an underserved population. The need is great. There is no shortage of closely held business partners that need either conflict prevention or resolution services, regardless of the industry they're in, their size, or their issues or personalities. Partners desperately need guidance to fully understand the complexity of partnership. The partnership charter process, or something similar, is needed to strengthen the collaborative relationship and to help co-owners negotiate the challenges of being partners. Even if partners are negotiating preventatively, before they're experiencing conflict, mediation can be extremely useful.

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