

# BUSINESS FRACTURES:

## HOW TO AVOID AND HOW TO RESPOND

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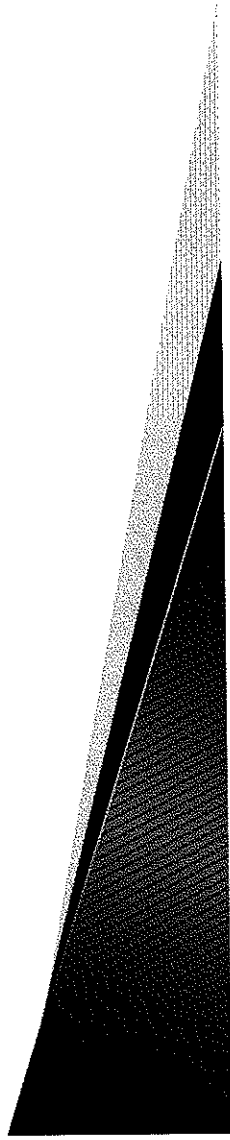
*November 13, 2012*

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**MPS**

## What is a “Business Fracture?”

The separation of 2 or more business owners, resulting from the inability of such individuals to work together productively in a commercial setting.

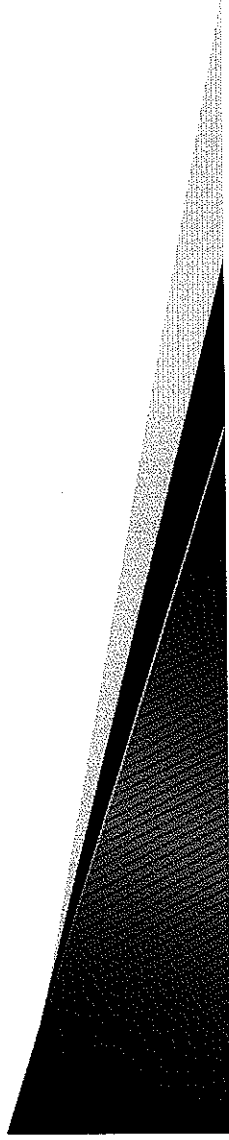


# How does a Business Fracture Occur?

A “mix” of factors:

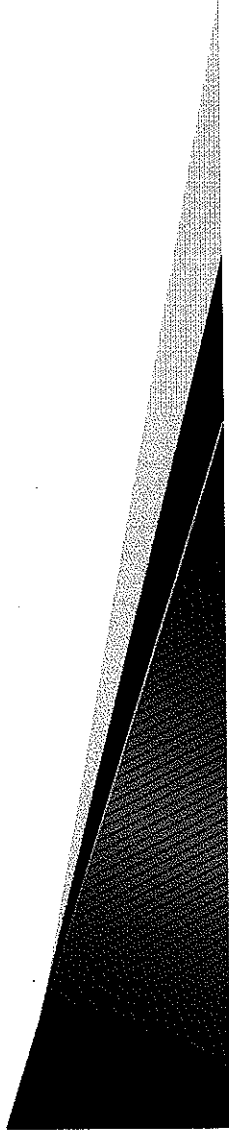
1. The Human Element:
  - a. type A personalities
  - b. too much faith in others
  - c. overextension
  - d. resistance to planning

“When you’re dying of thirst, it’s too late to think of digging a well” – Japanese Proverb
2. Success
3. Life-Related Events
4. Distrust of Advisors
5. Too much faith in the system



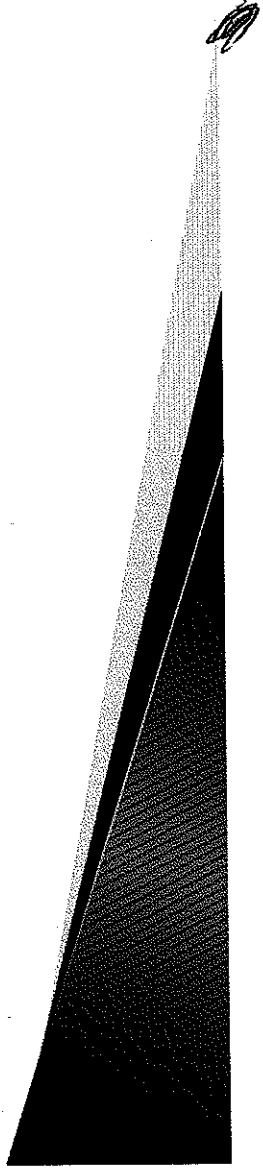
# What can be done to reduce the chances of a Business Fracture?

- Avoiding a business partnership, if possible
- OR, entering into an Owners' Agreement



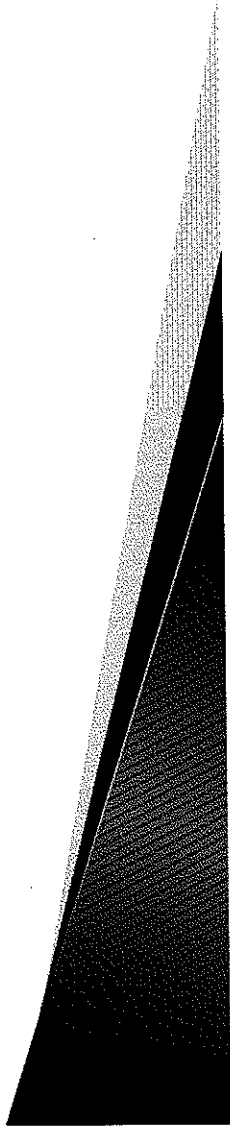
# Owners' Agreements

- **Broad Overview:**
  - What happens if a life event occurs?
  - Limitations on management of the company.
  - Exit strategy
- **Primary Goals:**
  - Anticipation of contingencies
  - Sufficient detail to resolve contingencies
    - for example: trigger event + optional/mandatory + who purchases + price (discount) + form of payment + security + release + restrictive covenant



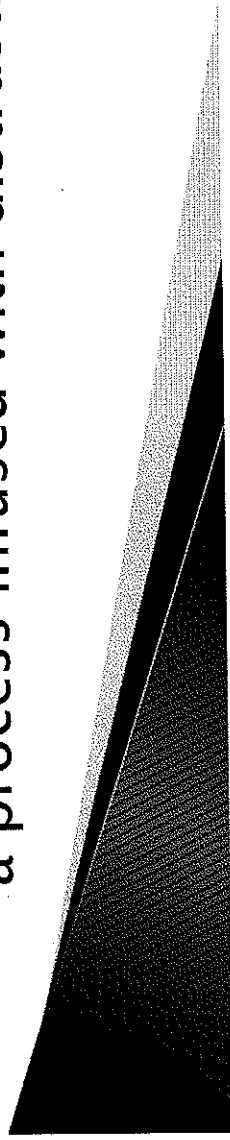
# Owners' Agreements

- Avoid these Pitfalls:
  - Failure to be self-executing
  - Overreliance as a substitute for management
  - Application of the wrong form to the wrong fact set
  - Failure to account for the perspective of both the company and the individual
  - Failure to update
  - Being too optimistic

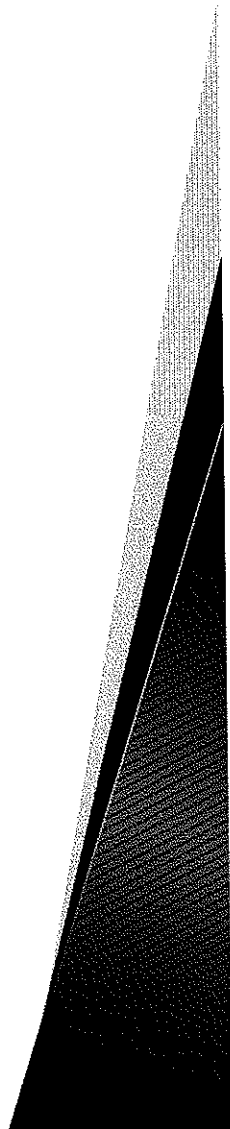


# Working through a Business Fracture

- **DO NOT underestimate emotion and psychology.**
  - “Where we have strong emotions, we’re liable to fool ourselves.” Carl Sagan
- **DO NOT underestimate the challenges:**
  - Trust is the foundation of all successful transactions.
    - “Trust is the lubrication that makes it possible for organizations to work.” – Warren Bennis
  - Working through a business fracture is, by its nature, a process infused with distrust.



- **DO NOT** focus on what is "fair" – it is not about "fairness," but moving on.
  - “Obstinacy is the result of the will forcing itself into the place of the intellect.” Arthur Schopenhauer
  
- **DO NOT** have too much confidence in litigation as a tool.
  - “Compromise is the best and cheapest lawyer.” Robert Louis Stevenson





- **DO use a transaction attorney, with a litigator as a backup.**
- **DO maintain an open mind to options.**
  - “To the man who only has a hammer, everything he encounters begins to look like a nail.” – Abraham Maslow
- **DO stay on the "high ground" throughout the process.**
  - “Patience is counting down without blasting off” – Source Unknown
- **DO something – it will not go away through inaction.**
  - “The greatest potential for control tends to exist at the point where action takes place.” – Louis A. Allen

