When thinking about estate planning, most people have a general idea about Wills. There are two additional tools that you can use to ensure that your wishes are known and met during your lifetime if you are no longer able to make your own decisions. These are:

- The Enduring Power of Attorney (EPA) appoints an individual to manage your property when you are incapable.
- The Personal Directive (PD) appoints an agent to make decisions about your person when you are incapable.

What is an Enduring Power of Attorney?

An EPA appoints a person (i.e. attorney) to manage your property if you become incapacitated. The document allows the attorney to make legal and financial decisions on your behalf. In your EPA, you specify the powers that the attorney has, which may be general or specific. Examples of the powers that the attorney has, which may be general or specific. Examples of the powers that the attorney has, which may include:

- The power to manage your property if you become incapacitated.
- The power to make decisions about your person when you are incapacitated.

What is a Personal Directive?

A PD is effective only when you are considered incapacitated and unable to act for yourself. With a PD, you choose an agent to make personal (non-financial) decisions for you. A PD is most often used to give enduring powers of attorney for elderly, infirm, brain injured, or others who can no longer manage their affairs for themselves. These are:

- An immediate PD is one that is signed and will continue if you become incapable.
- A Springing PD comes into effect only if you become mentally incapable of making reasonable judgements about your property. An example of an instruction that may be included in your PD is: “I do not wish my life to be prolonged by artificial means when I am in a coma or persistent vegetative state and, in the opinion of my physician and other consultants, have no known hope of regaining awareness and higher mental functions, no matter what is reasonably done.”

Without a PD, the courts may still appoint a trustee to manage your property. This can be costly and time consuming to obtain. It can also be difficult for family members to decide who qualifies to be your agent.

Myths about Personal Directives

There are some myths surrounding PDs that we encounter in our practice. These are some of them:

- Power of Attorney can be used to demand euthanasia or assisted suicide.
- A family member or friend can write a Personal Directive on behalf of an individual who has lost capacity.
- A Personal Directive can “require” the provision of medical futile treatment.
- Directives of a family member can override the directives of an appointed Agent who is not a member of the patient’s family.

Supplemental to the PD is Supported Decision-Making Authorization. This allows a person to assist in some or all decisions on personal matters for elderly, infirm, brain injured or people with developmental disabilities even though the person remains competent. Each Enduring Powers of Attorney Personal Directives may be sensitive and often technically challenging to prepare. We recommend that you work with a lawyer to create an EPA and PD for yourself or a loved one.

The Builder’s Lien Act is in place to protect the owners and contractors, subcontractors, suppliers and labourers who engage in a construction project. It includes a mechanism for contractors and suppliers to be paid for services and it limits the liability on the owner. The Act covers all sizes of projects—from commercial developments to home renovations.

Entitlement to a Lien

Rights are created as soon as work commences and/or materials are furnished. If the lienholder is not compensated, it can bring an action against the owner and any contractors to whom it has supplied work or materials. The court has the authority to order that the owner’s interest in the property be sold in order to satisfy the claims of lienholder(s).

Litigation process

Once a lien has been registered, the Act provides parties with many procedural mechanisms to deal with a claim:

- Payment into Court
- Notice to Prove Lien
- Notice of Commence Action
- Order for the Sale of Land

This is an overview of the Builder’s Lien Act. A builder’s lien can be an effective way to garner payment for unpaid work or materials, but it is important to note that it is not a guarantee of payment. Seek legal counsel to understand the requirements and restrictions that might apply to your situation. Likewise, if you are an owner, you may wish to obtain legal advice to ensure that you set up your Lien Fund(s) correctly and limit your liability accordingly.

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THE OPTIONS FOR DEALING WITH SHAREHOLDER DISPUTES

Ted Feehan and Erin Burton

It is often said that we spend more time with the people we work with than with our families. When business partners get in to bed together to run a company, many of the same dynamics and pressures of a marriage come into play. And, like a domestic marriage, sometimes things don’t work out and a ‘corporate divorce’ becomes the only viable option. In these circumstances, a solution must be found for buying out one of the owners. If a buy-out is not an option, than a process for selling and divvying up or assets of the business will have to be found.

There are four common approaches to resolving a shareholder dispute when one or more of the shareholders wants to buy out a partner and continue to own the business. Which solution is chosen depends on the parties involved and the circumstances. The four options are:

1. Mutual Agreement
2. Litigation & ADR
3. Shotgun Agreement
4. Butterfly Transaction

Mutual Agreement

If the parties can agree, the least expensive and most expeditious way to transfer shares is by agreeing to a share value and transferring the shares from one owner to another. Of course, for an agreement to be reached, all parties need to be willing to negotiate.

Litigation & ADR

Commencing litigation can often force a party’s hand and lead to settlement negotiations, which can include the transfer of shares. But, litigation in and of itself cannot force the sale of shares unless it results in an oppression order from the Court. Alternatively, the parties can agree to go to mediation or arbitration to determine the best option for the sale of shares. Mediation and arbitration offer a faster and less expensive route to resolution than going through the courts.

Shotgun Agreement

A common provision in a shareholders agreement is the Prior Unanimous Agreement (USA). It sets out the steps by which one shareholder can force the sale of shares. Commonly referred to as a ‘shotgun agreement’ this process involves one shareholder offering to buy out the other shareholder at a price per share of their choosing. The recipient of the offer must either accept the offer or buy out the shares of the other shareholder at the same price.

Butterfly Transaction

Under this process, the parties can agree to split the corporations into two separate corporations. The two new corporations must carry on the same business as the old entity. The division of assets in butterfly transactions can be difficult.

Liquidation

If there is a complete deadlock between equal shareholders that cannot be resolved through other means, the Courts can appoint a liquidator to sell the company assets. The shareholders of the company can also vote to place the company into liquidation.

Sell to a Third Party

The company shareholders may elect to sell the company and its assets to a third party. The shareholders agreement may contain provisions that need to be considered if this option is being pursued, especially if there are minority shareholders.

Informal Wind-down

The shareholders may formally agree to wind-down the corporation, pay off its creditors and cease operations. Unanimous consent of the shareholders will be required before the corporation is informally wound down.

While other options and strategies do exist to navigate disputes amongst shareholder, the options listed above are the most common tactics employed. It is important to note that there are many potential tax implications that accompany the options listed above. Tax advisors should be consulted before any shares are transferred.

While other options for dealing with a serious dispute, that has little to no chance of resolution, typically involve ending the business in one way or another.

Examples of ratios required by lenders include:

• Quick ratio - a company’s ability to meet its current obligations using its most liquid assets
• Current ratio - the number of times current assets exceed current liabilities
• Debt to equity - used to measure a company’s financial leverage, calculated by dividing a company’s total liabilities by its stockholders’ equity

If it was difficult for the business to achieve the required ratios when applying for the loan it may be difficult to maintain them throughout the repayment period.

The reporting requirements of the loan may also place a significant cost and time burden on the business. If a full audit is required, the cost will be significant and should be considered as part of the cost of the loan. A ‘review’ or ‘notice to reader’ by an independent accountant of the business’s finances will not be as time consuming or expensive, but still should be considered when reviewing the Loan Offer.

The security for the loan is another important consideration. Owners of incorporated companies will often be required to provide guarantees and their personal property as security, along with the assets of the business.

The security for the loan is another important consideration. Owners of incorporated companies will often be required to provide guarantees and their personal property as security, along with the assets of the business.

Finally, there is the issue of penalties. If a business fails to satisfy all the contractual obligations of the Loan Offer, the lender can call in the loan. If the transgressions are minor, the lender may give the business 90-120 day to repay the loan. If the breach of the Loan Offer terms is more severe, the time frame could be significantly shorter. Either way, the business owner will need to spend considerable time and energy finding an alternative lender in a very short period of time.

Owners looking for loans to fund a growing business must remember to look at the full cost of loan beyond the interest rate and repayment schedule. The specifics of the Loan Offer contract may not make that loan worthwhile. And remember, contracts can be negotiated, but not after they are signed. If there are terms you are unhappy with, raise them with your lender before signing. You may well be able to agree on terms with which you are both comfortable.