



Jake Dunlop:

I always tell my clients I'm in the worst case scenario business. Okay. I know everything's going to go perfectly. I hope it does for you. I tell them that every time, I really do, but my job's to plan for the worst and let's try to address some of these situations now while we're all on good terms and we're all getting along so that in the unlikely event that this does come up in the future, we kind of have a procedure to address it.

Jeff Large:

That's Jake Dunlop attorney at Rhoades McKee. His areas of focus include business planning and corporate law, mergers and acquisitions and tax law. Practically speaking, he's helping people buy, sell and run businesses. Today on Conversations With a Business Attorney, I had the opportunity to sit down with Jake and discuss everything related to shareholder and operating agreements. For now, you can just think of those contracts as something that helps you establish the rules and the guidelines for running your business.

I'm your host, Jeff Large, and I'm also a fellow business owner. This episode is going to be especially helpful for you if you want to understand what legal documents that your business should have and what those documents should cover. If you want to have an understanding of how to structure the decision-making power in your business, if you want to just try to learn the things that maybe you don't know yet and protect your business from future risks or if you want to know what to look for when hiring an attorney to help you draft these agreements. I begin my conversation with Jake explaining the different types of agreements and where they apply.

Jake Dunlop:

So an operating agreement applies to an LLC, so limited liability company, kind of a different company structure under Michigan statute, shareholder agreement is going to apply in the corporation setting. So there's shareholders that are the owners in a corporation and there's members that are owners in a limited liability company. And so it's just the difference in company structure for which one you would use.

Jeff Large:

And then are there multiple kinds of each or is it just a thing, this is this type of document and this is this type of document?

Jake Dunlop:

Yeah, they're very different and mostly because of the terms you're going to use. Like I said, shareholders are kind of under the corporation statute, members and similarly managers for the LLC, and then you're going to have officers and directors for corporations, so they're very different agreements, I would say, but they address a lot of the same things.

There's so many nuances and things to think through and some people want to try to keep it really straightforward. We don't need to address those things, usually against my advice. And then other things, we really get into the weeds on what types of decisions are going to require maybe everybody's approval versus things that one person could go out and do on their own.

Jeff Large:

So I mean, there's a lot of different directions we could go. I do want to get to some of these specifics of what to include, but I'm curious maybe to continue setting the framework or the



stage. Do you need one, say you're the primary owner, do you need one? Or is this only in the case of multiple people involved?

Jake Dunlop:

Yeah, that's a great question. You absolutely need one. So even if you're a single member or a single owner, you absolutely want a single member operating agreement, for example, in the LLC context. I'd say actually it's probably less important on the corporation side because you're going to have bylaws and some other documents that maybe would govern, but on the LLC side, you would absolutely want a single member. It's a lot shorter, it's a lot easier to prepare if there's only one because it's just saying, Hey, I'm the sole member. I'm the one that's going to make all the decisions. But you do want that for purposes of adhering to what we call corporate formalities. You can jeopardize your limited liability protection, which is the whole reason you're setting up a company if you don't adhere to all of those. And so having an operating agreement in place, even if it's just for one person, is really important.

Jeff Large:

Interesting. How does that work then? I would imagine the listener who is the single owner where it's like, I know I want to run my business. Why do I need this? What are these kind of regulations that you're talking about that I could all of a sudden become susceptible to?

Jake Dunlop:

Yeah, so there's kind of a series of case laws in Michigan in court decisions that have said that if you don't adhere to corporate formalities that you can what they call pierce the corporate veil, meaning that creditors can seek recourse against the actual owners instead of just against the business. I mean, the whole reason you form an entity is to have this protection so that the individual owners don't have personal liability for company obligations, and you just jeopardize that by not adhering to those things. So having an operating agreement in place. Another common one is commingling bank accounts. There's a lot of case law on that. I mean, if you don't have a separate operating account for your company versus your personal bank account, that's a grounds to maybe pierce that corporate veil.

Jeff Large:

And then just to clarify a couple terms, when you say pierce that corporate veil, it just means put you at risk of say something happens where normally the business could get sued, it all of a sudden would become your problem, your personal problem.

Jake Dunlop:

Exactly right. Yeah, which like I say is the whole point of having this entity in place. I mean there's maybe tax reasons too, but it's mostly to say, Hey, I as the owner of this business don't have personal exposure for company obligations, but if you don't adhere to these things I'm talking about, now you've just gotten rid of that whole thing and now you've subjected yourself to possible claims individually even though you have a business. And it's one of those things where if this ever got challenged or somebody was trying to bring a claim against you individually for a business obligation, they're going to seek to review all that stuff and the court's going to say, do you have an operating agreement in place? Do you have separate bank accounts? I mean, those are the types of things they're going to look into. And if you don't have one, it is just not a good fact. If you're having a defendant, an action like that.



Jeff Large:

Having documents like operating and shareholder agreements will help take the guesswork out of running your business. As Jake mentioned, if complications ever do come up, these kinds of agreements will help all parties involved to see exactly how to navigate the situation. There are other factors beyond these agreements that you're going to want to account for. One of those being how decision making is structured in your company.

Jake Dunlop:

There's kind of a couple broad categories, but there's one kind of decision making of the companies, who gets to make decisions? In the LLC context, for example, if it's a manager managed LLC, you would typically appoint a manager that maybe is making the day-to-day decisions without owner involvement. The manager is usually an owner, but doesn't have to be. And then there's certain items that maybe you'd provide in there that are going to require member approval, and those things could be expenditures of more than a certain dollar amount, or they could be entering into a lease for real property for longer than a year. I mean, there's a whole host of hiring and firing employees depending on how much involvement the owners have in the day-to-day business.

So it's setting forth those types of things that, Hey, I'm a 25% owner, let's say. How much say do I want to have in the day-to-day. Sometimes if you're a silent investor, you say, "Hey, not much. If you sell the company, I want to have some involvement in that. If you want to dissolve the company or make some major purchase, maybe I want to have some say in that, but otherwise, I'm kind of relying on the manager to run the day-to-day business."

But it's thinking through all those things and we as the lawyers get in an interesting spot, because it's who do we represent? Are we representing the minority owner? Are we representing the company? A lot of times in preparing these agreements, we're representing the company and then we're kind of advising everybody that's involved to get their own counsel because everybody's got kind of a different interest. The time to do it's at the onset when everybody's on good terms and happy to do it. I mean, you're never in a position to put together an agreement like that once an issues come up between the owners. And so I always try to tell people, now's the time. Right? Set these ground rules at the outset.

Jeff Large:

So I heard decision making, what else?

Jake Dunlop:

Yeah, decision making. The other big one is kind of what I would call buy-sell events or triggering events. And so that's kind of how do we address what happens if an owner dies? Sometimes that's a company option to purchase. Sometimes that's a company requirement to purchase. Other ones are disabilities common and that maybe applies depending on how involved you are. If there's three owners and they're all involved in the business, sometimes you want to be able to purchase a disabled owner's interest because they're not going to be able to be involved anymore. And in a fairness way to their family too, I mean to create a liquidating event where they can get cash for that ownership.

Involuntary transfer, so bankruptcy if something came subject to that. Divorce is another one. And sometimes it depends on the context, but termination of employment could be another one. If we have a key employee that we've allowed to have a 10% interest, which sometimes is not advisable, but sometimes people want to do that if they are no longer working for the company



anymore, that usually is something we would want to have a triggering event. You don't want a now 10% owner, let's say, who isn't involved in the business anymore.

Jeff Large:

That'd be problematic.

Jake Dunlop:

Yes.

Jeff Large:

All right, so we have decision making. What was that one called again?

Jake Dunlop:

I would say buy-sell events or triggering events. The big one, and it really only applies if there's going to be kind of a 50/50 ownership situation, but deadlock provisions and how we're going to handle a tie vote becomes critical. And not every company's going to have 50/50 ownership, but I've seen enough of them that that becomes a big issue and something you certainly want to get right at the outset. I had a client not long a couple years ago who they kind of set up everything. I mean, perfect example, bylaws, stock certificates, articles of incorporation, 50/50 owners, and they never did a shareholder agreement and they kind of ended up in a big dispute, didn't like each other much anymore, and it kind of became, well, what do we do now? One partner wants to go one direction, one partner wants to go the other direction.

Jeff Large:

Setting up these agreements with your partners and your shareholders when relations are good is going to help save a significant amount of stress and problems from when difficulties do arise. Now, most of us can think of the nightmare scenarios that can arise. Jake recalls one where partners were having issues over maintaining equal responsibility and the business taking on debt.

Jake Dunlop:

One of the shareholders in that case had another business that was, I wouldn't say competing, but was a similar kind of business. And so the dispute really came around. One shareholder felt like he was the one working all the time, and the other one was spending more time with his other business. And so the shareholder that was working all the time wanted to expand the business, maybe take on some additional debt and to try to grow the business. And the other shareholder just wasn't interested in that at all. And so they were fighting about it and "Hey, I want to do this. You can't just unilaterally decide I'm going to take on debt for the company." And it was even more complicated than that. There was personal guarantees involved and different certain debt obligations, but they just had a huge disagreement on that.

Jeff Large:

At what point did you get involved?

Jake Dunlop:



Yeah, so I got involved when our client shareholder wanted to understand his rights. He said, "Hey, can you look at our governing documents, bylaws and kind of see," he's like, "We're both on the board of directors. There's two directors, me and him, and we're both 50/50 owners, and so what are my rights?" And after looking at the documents, I mean the short answer was we don't have a great path forward here other than trying to negotiate somebody to buy out the other, and then nobody could agree on valuation and what that looked like, and it was a real mess. I'm always talking to clients about deadlock and the 50/50 situation, but that was one of the first times I had seen it play out where man, the people have spent tens of thousands of dollars in legal fees to try to figure out something that we could have addressed pretty quickly in a shareholder agreement had they entered into one at the outset.

Jeff Large:

If you had to take sort of an objective stance, how frequent do you see things like this happen where it's like, no, we're all right and then all of a sudden we're not all right?

Jake Dunlop:

Yeah, I think more often than you would think, and I think everybody's all right because they don't know what to expect yet. A lot of times you're dealing with people who have never been in business together or maybe never been on their own. They've just been employees and now they're going to start off doing a business on their own that they've never done before. And so I think everybody has kind of a pie in the sky optimistic view on what that can be. And I always tell my clients, I'm in the worst case scenario business.

I know everything's going to go perfectly. I hope it does for you. I tell them that every time, I really do, but my job's to plan for the worst and let's try to address some of these situations now while we're all on good terms and we're all getting along so that in the unlikely event that this does come up in the future, we kind of have a procedure to address it. And it's tough. You can never anticipate every situation that's impossible, but we try to, based on cases I've seen or clients we have and experience and drafting these to at least get hopefully 80% of them or something more than that even to address the big situations.

Jeff Large:

Yeah. I'm kind of curious, do you feel like if you had to break up your clients into maybe percentages, how many of your clients are coming to you at the beginning, the beginning when things are good versus how many of your clients are coming to you when all of a sudden there's an issue going on?

Jake Dunlop:

Yeah, that's a good question.

Jeff Large:

Is it more one than the other?

Jake Dunlop:

I think most people will put together an operating agreement has been my experience. When I see startups putting together their first operating agreement, the question is how much money do they have to spend on legal? Usually not a lot at the get-go, and we try to work around that frankly on our side to try to be able to help still and maybe grow with that client. But I think



where I see issues is people doing it themselves, and not understanding some of these nuances we're talking about or appreciating what they mean. And so you end up with a situation that they probably didn't intend. They thought they had it covered, but they don't. So I'd say that's more the common issue. I don't see a lot of people, at least on the LLC side who don't have an operating agreement. I don't see that very often, but I do see they have an operating agreement that maybe doesn't do what they want it to do.

Jeff Large:

Yeah. I was wondering if I can jump back in. I do feel like there are services that kind of empower owners and shareholders to be able to do these things, but I also imagine just like we're talking about, I mean we're based in the state of Michigan and there's going to be certain rules, regulations, whatever that apply to us that might not be the same to somebody that lives in Maine or Texas or whatever it is. What are the pieces that are commonly missed in those types of situations? Or what is getting overlooked from your point of view? What am I missing out on when I think I have it under control?

Jake Dunlop:

I don't know that I would pinpoint one thing necessarily. I think what I would say is I don't know that there's a great appreciation for how many different discussion points or decision points there are in an agreement like that. When I'm looking through an agreement that somebody else prepared for example, and they say, "Hey, I'm thinking about entering into this company as an owner, can you take a look at it?" And I mean, there's a whole host of things I want to see. Who has decision-making authority? What decisions do you have a say on? Like I was saying earlier, do you get to decide if there's a capital lease more than a hundred thousand dollars or 10,000, whatever the threshold is for that type of company? What are the capital call provisions? Are you going to be required to make additional capital contributions to the company? And if so, what happens if you don't? Right. Are you going to be diluted now? I mean that's a common remedy.

Jeff Large:

What do you mean by diluted? What happens then?

Jake Dunlop:

Diluted, so it's a common remedy if you have a number of owners and the manager of the company decides that the company needs more money for something, whether it's investing in equipment or putting up leasehold improvements. I mean, it could be any number of things, but some operating agreements would say something to the effect of the manager or a majority of members. I mean, it's all negotiated, but somebody can make a decision that each of the owners needs to contribute their pro rata share of the additional capital needed. So in a hundred thousand dollars capital need five owners that are 20% each. In other words, everybody's got to put up \$20,000.

The question is, well, what happens if you don't? Do you want to be obligated to make that contribution? And if you don't, what dilution is, it says, if you don't make your contribution, then the other members have the option to each contribute 25,000 each, the remaining four, and then they're going to take your membership interest down rata based on your failure to make the contribution. So now your ownership interest is less. So you want to know kind of where the negotiating points are. Do we want to have dilution? Another remedy in that situation is to treat it



as a loan. So then when distributions are made to the company, that loan has to be paid back that the other members made to you by making that up. But you still have the same percentage ownership then. So that's kind of a different way to do that. Or sometimes they can't, depending on the business, you might say, you can't require me to make a capital contribution. I don't know that people are appreciating those kinds of nuances when they're not having a detailed conversation about it.

Jeff Large:

Yeah, I was going to say, originally I was thinking that it was more of like, this is just omit or this is just missing. But what it actually sounds like is that you've witnessed people when they try to do it on their own or when they set these things up independently, a general understanding's not there of how it all works, maybe a this and this seem covered. But like you said, because there's so many nuanced situations, there's so many variables. If you're not truly talking through it, your agreement might not address everything. You might not fully understand what your agreement's actually doing. Is that what I'm hearing?

Jake Dunlop:

Yeah, exactly. And I think the value add that really our firm as a whole has is to understand your options. If you don't do this every day like we do. You don't understand that what I just described. I mean, there's three different ways I just described to handle that. And there's other hybrids. And so if you don't know that, are you just agreeing to something you don't know what your other options are? Right? And I'm not saying any of them are good or bad, but you want to make a fully informed decision when you're entering into those things and understand what all your options are.

Jeff Large:

Do you find when you're creating these agreements, because I know in a lot of other professions, we'll do things in order to make our lives easier. We'll create the processes, we'll create templates. Do you start from templates when you create these things and then kind of tailor them? Is that how this sort of works? Or are you drafting things fresh every time?

Jake Dunlop:

Yeah, no, it's definitely from a template. So we'll have kind of a starting point and everything's going to depend on people's negotiating power and what are you a 90% owner, you probably have a lot more say right than the 2% owner. And so there's kind of different avenues there. But absolutely, we start with a template, but every company is different. The business activity is different, the capital needs are different, and so you just need to think through all those things when you're putting together those agreements.

Jeff Large:

Do you have any other stories that illustrate some of these points that we're talking about of situations that maybe could have been avoided or that are problematic that come to mind?

Jake Dunlop:

That's a good question.

Jeff Large:



And I'm just wondering, not from a fear standpoint, but of just situations that you might not think would come up and then they have and you've watched it or you've helped people through it.

Jake Dunlop:

Yeah, I had another client who, they had a key employee that they allowed, and I don't remember what the percentage was, but let's say 5%. I mean, it was a minority interest in the company. They said, yeah, they invested a small amount of capital. I think, I don't even remember how they got in, but they allowed them to be a minority owner without our involvement. This was kind of before we got involved in. What ended up happening was they didn't amend their operating agreement at that time to provide that in the event this employee was no longer employed by the company that they could buy back their interest.

And that created a huge issue because what you had then was this employee quits, goes and works for a competitor. I don't think he had a non-compete, if I'm remembering, but I mean he went to work for a competitor, but he still owned 5% of this company and they didn't want him to anymore obviously. I mean, he's working for a competitor now, and now you have a 5% owner. And so they kept trying to negotiate with him to get him out, and it was just a mess. And eventually they came to terms, but the employee in that situation probably had a lot more leverage than they should have had because there was no requirement to get him out.

Jeff Large:

It's like one of those triggering events that you're talking about.

Jake Dunlop:

Exactly.

Jeff Large:

So if A happens, then B goes on.

Jake Dunlop:

And I think anytime you're making a change to ownership, what's helpful to have an advisor to just think through the implications of every part of that, right? I mean, how is that going to impact what we're doing? And that's I think a perfect example where I think we would've said, "Hey, don't we want to be able to buy them out in the event they leave?" And then that leads to a whole nother set of questions. Are they a party to a written employment agreement? If so, if they're terminated for cause, should there be a discount on the purchase? If they stole money from the company and you terminate them, should you still have to pay full market value for that interest or should it be discounted?

There's a whole list of or series of questions to think through. I tell people all the time, all my clients, I mean at the end of the day, I'm just here to tell you worst case scenario to tell you kind of what your options are, but they're all business decisions. There's not a right or wrong answer to that. Should there be a discount? I don't know. If you don't think that's fair, that's fine, but I don't want you to enter into this agreement, sign it and not have thought of it or at least thought through what your options were.

Jeff Large:



Yeah. We've talked about the basics of what should be included. You said to recap some of them, we're talking decision making, we're talking about these buy-sell events or these triggering events, talking about distribution, sort of how the money's handled. Is there anything else that just even with some of these situations that you feel like is commonly overlooked or that you wish your clients were thinking about in advance?

Jake Dunlop:

Yeah, I think another one would probably be restrictions on transfer. And what that means is a section in the agreement or language in the agreement that states that you can't transfer your ownership without our consent. That's another really common provision to include, but it's important. And I'd say especially on the shareholder side, if you're corporate side, if you don't have a shareholder agreement, you might not have restrictions on transfer anywhere. They might not be in the bylaws. And what you don't want is to have shareholders who can just transfer it to whoever you want. I mean, you generally are getting into business with some other owners that you want to be in business with. You weren't planning to become business owners with their friend or somebody you don't know. That's kind of getting back to the basics, but that's something pretty basic you would want to have in an agreement or documented so that you're not having people transfer ownership to somebody you don't know or another third party.

Jeff Large:

I mean, I think hopefully it's become obvious at this point that these documents are important and that you should probably seek legal counsel in order to get it straight. And I'm curious, as a business owner or just shareholders, where do we begin? Let's say I don't have one of these and we're on the onset is it's one of the first things I should do. How high should I prioritize this?

Jake Dunlop:

Yeah, I think it is one of the first things you should do. Filing articles and getting an entity form. That's not a difficult task, but I think getting this right at the outset, I can't emphasize enough how important that is to, especially if there's going to be more than one owner, you really need to think through a lot of these things and to think about what should happen if one of us dies, how should we address a deadlock if it's 50/50? I mean, all these things we've been talking about, I mean, it's invaluable to have that in writing. And like I said before, hopefully it never comes up. It's never an issue. I hope that for all my clients, but that's just not reality in some cases. And it's better to have addressed all that stuff upfront. You're going to save yourself a lot of time and money on the backend by investing in getting it right on the front end.

Jeff Large:

Say things are good and I'm in business already. Is it too late?

Jake Dunlop:

No, absolutely not. No. So we do that. That's not uncommon for us. So you can at any time enter into an operating agreement or shareholder agreement. And the other part I didn't touch on that I probably should have is these can be valuable tools from a succession planning standpoint, and I know we've got another whole podcast we're going to do on that, but that's another way to kind of pass businesses on in a family. So that's kind of another key part of how these things can operate. But no, it's never too late. We're doing them all the time. Yeah, certainly recommend it if there's not one in place and the parties are on good terms, or even if



they're not, maybe that's the starting point for getting back on good terms and figuring out how we're going to make these decisions. It's important.

Jeff Large:

Another thing from the onset here, something that I'm curious about is what kind of question should I be asking the people, like the attorney that I'm potentially going to work with? What is the baseline of what I understand? How could I vet somebody like you. If I didn't know you and I was coming in to see if I wanted to work with you? What are those questions you should be asking the potential attorney or the potential lawyers that you'd be working with?

Jake Dunlop:

That's a great question. I think one, you want somebody who does this full-time, some of the agreements I've seen or reviewed that are not great are because they had a lawyer in their family or a lawyer that was a friend that maybe does a different type of law and said, "Oh yeah, I'll do your operating agreement." But if they're not doing this every day, you can't know all the nuances. Just like I can't know the nuances of estate planning or doing litigation. I mean, my client certainly wouldn't want me working on their estate plan. I have no idea what to offer there. And could I grab a template like we were talking about earlier and fill in some names and do it? Sure. And I think some people do that, and I think that's a big mistake. So I think you want somebody who does this, does business law day in and day out to be able to get the best advice. So I think that's number one. And then kind of number two is making sure that they are working on businesses of the type and the size that you're working on.

Jeff Large:

How important is that? Because obviously there's huge differences between a single member LLC versus a multi-person, shareholder corporation.

Jake Dunlop:

Yeah, I don't know, if you're getting a business law attorney, I don't know that is going to be critical. What I'm trying to say is you don't want somebody who only does single member LLCs. I think you really want somebody who has broad experience in a lot of different contexts because like I keep saying, every business is different. The capital needs are different, and so it's helpful to have some understanding of that going into it so that you can maybe give some better advice. The fact that I've been able to work with so many different types of companies and types of clients, I feel like has made me a better attorney for being able to give the best advice.

Jeff Large:

Here's the beauty of this. You are hiring an attorney because they are the expert. You don't need to be. You want them to have a variety of experiences and to know what kind of questions to ask in order to get to the right outcomes.

Jake Dunlop:

So there's a lot of details to think through. What I would tell you is that usually I'm the one asking the questions, and it's a lot of things that business owners haven't thought of. Most meetings, initial meetings, and we're talking about putting together an operating agreement, they leave a little bit overwhelmed. I usually follow up with a list. It's a little easier to kind of tick through it, but I think a lot of people have not given the amount of thought that they realize they



needed to give to some of those terms. So yeah, they'll leave the meeting going, wow, I have a lot to think about, and I think we should be the ones asking the questions, not vice versa. I think in those situations they usually come and say, "Hey, there's two or three of us. We want to form this company. These are what the percentages are. This is how much capital we're going to invest." And they've not given a lot of thought to the rest of it. And I think that's where we can add value.

Jeff Large:

What do you wish people came ready to discuss? What kind of preparation should I be doing as owner or owners?

Jake Dunlop:

I think the toughest part to discuss or think through is just the types of decisions that who should be making the decisions. So we had talked about that as a key part of the operating agreement. For minority owners, should they have a say on, like I was saying, buying a capital expenditure over a certain amount, hiring and firing employees. And it's tough, I think, for the clients to know what types of decisions, and we can help with that. Hey, here's all 20 types of decisions that I've seen in other operating agreements that people sometimes want to have a say on, sometimes don't. And we can think through all of that. And if you're involved in the day-to-day, it's a little easier too. If you have a silent investor, they probably don't care or maybe at least for certain decisions. So I think thinking through the types of decisions that you should have input on or that you would want to have input on, I think that's something that you could come prepared with.

I think, like I was saying, the terms on some of these triggering events, if you're going to put in a week after buy out, if you die, if you become disabled, what do those terms look like? Are we going to fund it with life insurance? I do it every day, and so I'm really familiar with all the options and what you can do. And so we try to prep people with thinking through some of those things before because it just makes our life easier and more efficient, frankly, on the drafting end, if a lot of this has been thought out beforehand.

Jeff Large:

Yeah, I'm sure. So I'm hearing really, it's probably from the owner or owner standpoint, how do they want to be involved? And then I would imagine that second piece is probably a little harder to think about or anticipate. So at least just have a sense of maybe the money, how the money works.

Jake Dunlop:

I think what I would say is you want to understand or come prepared with what types of events should require a buyout, so maybe not the terms of it. I can help with that, how we get to the dollars, what your options are for payment, things like that.

Jeff Large:

And then just to double clarify, a buyout being an owner no longer having their ownership or at least giving away, losing part of their ownership, what kind of events would trigger that? That's what you're saying?

Jake Dunlop:



Yes.

Jeff Large:

Okay.

Jake Dunlop:

And like I said at the outset, I think death, disability, involuntary transfer, termination of employment, those types of things, but that doesn't, sometimes people don't want to do that, right?

Jeff Large:

Yeah, that's hard. Nobody wants to think about that. It's like a reality that you see and you have to deal with, and so it becomes, it's probably a little more just familiar and easy for you to talk about because you're dealing with the worst of it at times, but I know for anybody that's starting a business, it's not the first thing on our mind to go, Oh, what happens when I'm dead?

Jake Dunlop:

Yeah, no, absolutely right. But you never know what is going to happen. You got to prepare for it, and in some cases, people don't want to, and I've done operating agreements like that. At the end of the day, it's all a business decision. I just want to make sure my clients know all the facts and their options and they can let me know what they want to do.

Jeff Large:

Is it hard to, I see your role or an attorney's role to be objective and to come at things more kind of clean slate and probably have a less emotion to it where it's just really probably line one would be, how do you want to handle this? And then line two is like, when that doesn't work, to go into it of like, okay, how can I best protect the client and their needs and their desires and that type of a thing? But I mean, so much of this can revolve around things that are human and personal. How do you deal with that?

Jake Dunlop:

Yeah, I think you certainly have to have some level of empathy, I'd say, and kind of understand that they're difficult situations. If there's a dispute, again, we're trying to prevent that and hopefully be able to avoid that, but it's a big deal. I mean, most clients, I have a majority of their net worth is tied up into their business. It's a huge deal. And so for me, it's being sensitive to the fact that this is maybe the most important thing in their life going on. I mean, if you have a dispute of your business, which is your livelihood, there's very few things that are more important than that. I oftentimes tell my M&A clients if they're selling, I'm like, if this is your sole business and you grew it for 30 years, which is not uncommon for us to be dealing with, I mean, you only get one shot at this, right? We've got to get it right. It's hugely emotional. Yeah. It's easy for the attorney to step back and try to be objective because we don't have an interest in the company, but it's difficult and it's emotional for sure.

Jeff Large:

Big thanks to Jake Dunlop for sharing his time and his experience in today's episode. If you are setting up a business or you realize that maybe you are missing some of these agreements,



consider connecting with Jake or one of his peers, you can learn more at rhoadesmckee.com. The link for that will be in the show notes. Conversations With a Business Attorney is a project from Rhoades McKee, and it's produced by Come Alive Creative. I've been your host, Jeff, Large. Big thanks to Rachel Workman, Isador Nieves, Elaine Moore, and everyone who helped make this episode possible. And if you found this helpful, please do me a favor, share it with the other business owners you know. Thanks.