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I Should Have Changed The Oil

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Dave Ashcraft

I am sure you have seen the garage mechanic on television wiping the grease from his hands and saying in a matter-of-fact way: "you can pay me now, or you can pay me later", basically referring to the fact that you should change the oil in your car every 3,000 miles or you are likely to have expensive car repair bills. The same concept applies "in spades" to shareholders of closely held corporations.

When a corporation is first organized, the owners often desire to minimize organizational expenses and choose to

delay having an effective Shareholders Agreement prepared which sets forth the owners' expectations concerning the management of the corporation, employment by the corporation, distribution of corporate profits, and buy/sell arrangements among shareholders. Certainly, in the beginning of a business venture, the participants are of like mind, excited about the possibilities of the future, have good business relationships with each other, and believe that if any problems arise, they can simply work those problems out among themselves. My experience over a 25 year period has confirmed that nothing helps owners of businesses get along better than to have good, effective Shareholders Agreements.

Consider the following situations:

- 1 I invested \$100,000 in the corporation, am a minority shareholder, and am employed by the corporation without a written employment agreement. The Board of Directors of the corporation just told me that because of business circumstances they are going to have to terminate my employment but my \$100,000 will remain invested in the corporation. What can I do?

(continued inside)

I Should Have Changed The Oil *Continued*

- 2** I am President of and own a majority of the shares of stock of the corporation. One of my business associates, who has been employed by the corporation for years, just told me he is retiring and has sold his minority interest in the corporation to our toughest competitor for a handsome profit. What can I do?
- 3** Our corporation is an extremely profitable business worth about \$10,000,000. Joe, who owns 25% of the corporation, just died in an automobile accident and his wife, with whom I could never get along, has called this morning requesting that she be put on the Board of Directors and be made an officer of the corporation. What can I do?
- 4** Four of us are equal owners of our corporation and serve as directors. Two of us desire to borrow \$1,000,000 to update our equipment and expand the business of our corporation to remain competitive in today's business environment. The other two are approaching retirement, desire to pay off all of our debt, and not make any changes in our business. We are deadlocked in the management of our business and, as a consequence, the value of our corporation is diminishing. What can I do?

- 5** My business associate and I have a very successful business, but can't seem to agree on the day-to-day management of the business. I wish that I could either buy him out or he would buy me out and the business continue without the day-to-day dissension. What can I do?
- 6** The four of us have been equal owners of our business for years and have worked hard to make it successful. Joe has become disabled and is unable to perform the usual and customary duties which he has performed through the years. Joe has demanded that he continue to receive his normal compensation although he rarely shows up for work. What can I do?

Although it is impossible to cover every business scenario which may arise in the future, a well drawn Shareholders Agreement can effectively handle many common issues faced by shareholders during the business life of their corporation. The Shareholders Agreement can set forth the shareholders' reasonable expectations concerning

- A** their participation in the management of a corporation,
- B** their employment by the corporation,
- C** their rights to profits from the corporation,

- D** buy/sell arrangements on a shareholder's death,
- E** funding of the purchase of a deceased shareholder's stock with insurance or a deferred payment plan,
- F** restrictions on transfers of corporate stock, and
- G** a mechanism to break a deadlock in the management of the corporation.

Experience has proven that when disputes arise without a good Shareholders Agreement to provide a legal framework within which to resolve the disputes, litigation often follows which is extremely costly, results in frustration and emotional drain, and causes all parties concerned to devote time and energy to negative matters rather than positive business development.

The bottom line is, owners of businesses should have an effective written agreement to help maintain good business relationships among the owners and avoid the uncertainty of disputes resolved by extremely costly litigation, rather than by the agreement of the owners.

The cost of an oil change is small compared to the cost of replacing your car's engine, and likewise, the cost of having an effective Shareholders Agreement is small compared to the cost of expensive shareholder litigation.



Living Wills Make Your Desires Known!

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Cory Rayborn

Dealing with illness and death is never easy, but these issues become much more complicated when you have never made a definitive statement regarding your medical care and you become terminally ill or lapse into a persistent vegetative state. In a recent controversy in Florida concerning a brain-damaged patient, years have passed as both the state legislature and court system have stepped in to settle the debate

between the patient's husband and her parents regarding what was the most appropriate course of action. This difficult debate has centered around whether or not the complicated life-support equipment keeping the patient alive should or should not be disconnected. The Florida affair could have been handled quite differently if the patient had previously signed and executed a document stating the sort of medical treatment she would desire if her health ended up in such a state.

This sort of *declaration*, commonly referred to as a living will, is available to individuals in North Carolina in the form of a Declaration of Desire for a Natural Death. The Declaration allows you to express your health care wishes, which relieves your family members who would possibly agonize over such momentous decisions. Another useful document which works hand in hand with the Declaration is a Health Care Power of Attorney. With this document you can authorize who

you want to make your health care decisions if you become unable to make them for yourself.

Recent developments in North Carolina now give you the ability to register your original Declaration and Health Care Power of Attorney in an online state-run database. Registering with the database allows you to pass along your login and password to those close to you who might need access to these documents at a later time.

A third document known as a durable General Power of Attorney allows you to designate who you would like to handle your financial affairs if you become unable to do so for yourself. Our estate planning attorneys can assist you with these documents which will protect your integrity and your assets. Please contact Pat Levy or Cory Rayborn for further information.



MEET SUSAN M. SHAW, CLAS

Susan is a litigation paralegal with our law firm. She is originally from Sheffield Lake, Ohio and currently lives in Greensboro with her husband Bruce and their two daughters, Heather and Amber. She received her paralegal certificate in June of 1995 from the American Institute of Paralegal Studies. She received her Certified Legal Assistant designation

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in February of 2001 and her Civil Litigation Speciality designation in September of 2002.

She is a presently a member and the Secretary to the Executive Committee and Board of Directors of the North Carolina Paralegal Association, a member of the National Association of Legal Assistants, a member of the North Carolina Academy of Trial Lawyers Legal Assistant Division and the North Carolina Bar's Legal Assistant Division. Susan's membership in these paralegal organizations assists her in keeping

informed of recent changes in her profession to better serve our law firm and our clients.

Susan works in the litigation department of our law firm where she assists the litigation attorneys in preparing for trial, drafting of legal documents, discovery, analyzing cases, maintaining files, communicating with witnesses and clients, and anything else that needs to be done to provide superior service to our clients.



Car Accident? Some Helpful Tips

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We certainly hope that anyone reading this is never involved in an automobile mishap. But if you or someone close to you has an accident, there are some fundamental rules to follow:

- Do not leave the scene of the accident until the police have been notified and an officer has obtained information about the accident. If possible, find out the officer's name.
- Do not admit liability to the other driver, passengers or to the police. You should provide factual details to the police about how the accident happened, but liability is a legal matter not always quickly determined.
- Get as much information as possible about others involved in the accident. If possible, take photographs to document the accident scene,

including skid marks and damage to all vehicles.

- Get as much information as possible from witnesses and secure the name, address and telephone number of any witness.
- If you think you might have been injured, see a physician (even if you are only sore). Frequently, problems don't manifest themselves for several days; yet it's generally useful to seek examination as soon as possible after an accident. Depending on the policy, your automobile insurance may reimburse you for medical expenses.
- Any medical treatment should be claimed on your health insurance. If the other party is at fault, he is not relieved of responsibility for your medical bills simply because you

had the foresight to buy health insurance. And your health insurer is not relieved of responsibility simply because you were injured by a careless driver, who may not have adequate insurance.

- Take photographs of all wounds at the time of the accident and at each stage in the healing process.
- Consult an attorney before making any statement to the other driver's insurance company. Remember that the "at fault" driver's insurance company representative is not paid to act in your best interest.

For more information or assistance with your claims, please call Stan Hammer at 884-1000, ext. 233.



In Brief is published quarterly by Wyatt Early Harris Wheeler LLP. The purpose of this newsletter is to provide general information about legal developments. As the information presented is not a comprehensive treatment of the subject matters covered, readers are encouraged to seek specific legal advice before taking any action.



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