Introduction

Statistics show that the United States has 28 million small businesses, that small business makes up nearly 100 percent of all U.S. employers, and that these firms create 64 percent of all net new private sector jobs and employ almost 50 percent of all private sector workers.1 Most if not all of these businesses are privately owned. Some are family-owned, some are not. These businesses operate in various forms, some as corporations, some as partnerships, some as limited partnerships, some as limited liability partnerships, some as limited liability limited partnerships, some as limited liability companies, and some as sole proprietorships.

Being in business with another party or parties is a marriage. As in any marriage, different people approach things in different ways, have different views on the same subject, and handle relationships differently. If the business is a family business, family dynamics come into play and complicate the relationships. It is therefore important to provide for governance, succession planning, and exit strategies for participants at the time the business is formed and to memorialize these provisions in a written agreement updated as circumstances change. It is in many ways the same as a prenuptial agreement entered into before marriage. Unfortunately, it is quite common when these businesses are formed for the founders neither to make the time nor have the desire to spend the funds necessary to take this step after business formation. In those situations, a breakup can become a costly and prolonged process.

Most business ventures begin with the best of intentions. Participants agree to share not only the monetary investment but also the sweat equity of the hours and effort required for a successful enterprise. However, after

time the bloom may come off the rose. This can happen for many reasons. For example, one person may be working harder and putting more time in than the other person for the same compensation and become angry and frustrated. If it is a second or third generation running the business, conflicts may arise as to salaries and distributions between those employed in the business and those merely holding equity interests. In family situations, family problems unrelated to the business may cause the conflict. There are, of course, a myriad of causes, many of which will be examined in this book.

This book is neither a treatise on the legal or psychological issues involved in a business divorce, or the methods of preventing business divorces or dealing with a divorce once the differences between the parties become irreconcilable, nor is it legal advice. Its purpose is to point out—and offer to lawyers, accountants, and other business advisors to privately owned businesses a discussion of—the practical, legal, and psychological issues most commonly present in a business breakup, as well as methods of resolution and preventative approaches to the problem. It deals with two situations—preventative measures that should be taken at the time of formation and the most common issues involved when the situation has passed the point of no return. It also discusses valuation issues and issues common in structuring the divorce, as well as issues in the methods of resolution.

This book deals with closely held businesses—partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, and corporations. Whatever their legal form, they are in effect operating as a partnership. Therefore, when a business is referred to in this book, it means a business operated for all intents and purposes as a partnership, regardless of its legal form.