

Partnership Dissolution – Rights and Responsibilities

When partners fall out, there can be many difficulties, especially if either side acts in a unilateral way.

What duties and obligations do a partner leaving a firm and the firm being left owe to one another?

Firstly, every partner owes fellow partners a duty of fidelity – in other words, to be honest in their dealings with each other and to safeguard their partners' interests. This does not end when the partnership ceases as regards partnership property and it should be respected by all during the period before the break-up of the partnership.

For example, a partner who is intending to leave should not make use of the partnership resources (employees, cars, computers, telephones etc.) to help set up in competition, nor should they pursue their new business objectives during the business hours of the partnership nor make use of information which belongs to the partnership. A departing partner should not attempt to entice staff or customers away from the firm. This is one of the main areas of dispute when partnerships break up as it is widely ignored. That this can be less than sensible is demonstrated by several cases in which ex-partners who 'poached' clients from their old firms have been required to account to them for all of the profits made from those clients for a period of time. This situation is specifically dealt with in the current Partnership Act, which requires partners who compete with their firms to account to them for all of the profits they have earned by so doing.

Attempting to entice employees to join a new firm without giving the required period of notice can lead to a claim for attempting to induce a breach of contract.

One notoriously problematic area is that of restrictive covenants, if any are included in the partnership agreement. If the agreement contains no restrictive covenant clauses, then none will be deemed to exist. Furthermore, if the clauses that are there are unreasonable, the courts will not enforce them. The outcomes of cases based on breaches of restrictive covenants are difficult to predict. For example, a covenant against setting up in competition within a mile may well be enforced, whereas one stipulating a twenty mile limit probably would not. The courts have, over time, given less and less hope to those wishing to rely on clauses that can be seen as reducing competition through restrictive covenants.

Where there are enforceable terms, an injunction may be sought to prevent a breach of the covenants or an attempt may be made to sue for the profits made as a result of the breach.

The likelihood of success in pursuing a claim will depend on the quality of evidence of the breach and the loss. It will also depend on the existence of a clear and unequivocal partnership deed outlining the responsibilities and rights of the firm and departing partners. Establishing the appropriate level of economic loss is difficult enough without the basis of the claim being unclear. We would be pleased to assist you in protecting the partners and the partnership by drawing up an agreement appropriate to your individual circumstances.