PRESCOTT'S PERSPECTIVE ON TRANSITIONS

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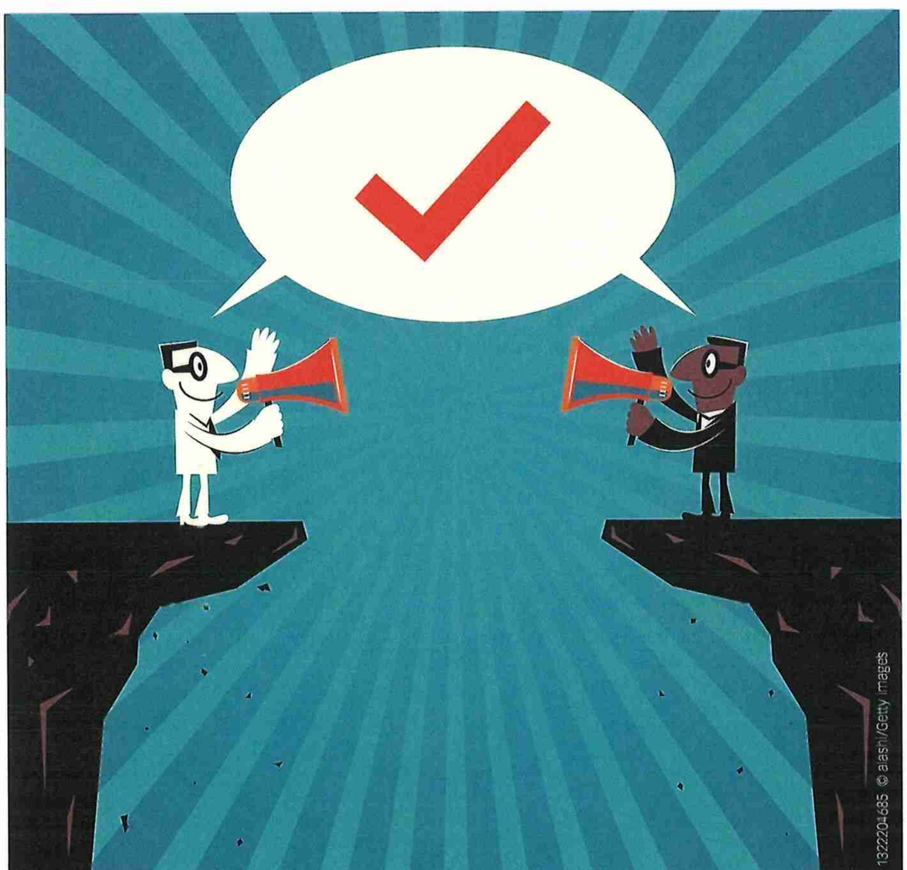
PART 2

# Avoiding disputes and dispute resolution in partnerships

**PARTNERSHIP AGREEMENTS MAY CONTAIN A PROVISION** naming a mutually agreed upon nonbinding arbitrator, although mediation or arbitration can be final and binding. The rationale behind nonbinding arbitration is to give the partners the tools to resolve what is bothering the disputing partner and assist the partners in operating their partnership both effectively and profitably over the long term.

In this regard, the arbitrator selected should understand the business of dentistry and the partners. The arbitrator should be asked if he or she accepts the arbitration assignment before it is signed. If a dispute should arise, the partner with the dispute would submit a written complaint to the arbitrator for a decision. The nondisputing partner should also address the complaint in writing. The arbitrator then issues a written decision. All the time constraints in the agreement provisions must be adhered to.

However, a more optimal outcome can be found through effective dispute resolution mechanisms to resolve disagreements and voting deadlocks, particularly if the ownership is equal. One or more dispute resolution mechanisms should be included in any buy-sell agreement, close corporation, or other shareholder or operating agreement for a limited liability company.



## BUY-SELL OFFERS

An effective method of dispute resolution is a buy-sell offer. One partner submits an offer to buy out the other and if the offer is not accepted, the partner who received the offer is required to buy out the offering partner under the same terms contained in the offer.

## CORPORATE DIVISION

As an alternative to the buy-sell offer, a disputing partner can elect to enter into a corporate division under Section 355 of the Internal Revenue Code. Under a corporate division, the corporation is divided into separate practices on a tax-deferred basis if certain technical requirements are met.

The tax-deferred nature of the corporate division makes it a very desirable tool when it fits. In a corporate division, the disputing partner leaves, and the nondisputing partner stays. Often, the shareholders have two locations, particularly specialty practitioners, making it very desirable for each shareholder to retain a location.

## REAL ESTATE

A buyout of the real estate, typically under an operating agreement, should be in place for the practice real estate if owned by more than one of the partners.

## AGE MATTERS

If the senior partner is substantially older than the junior partner, a dispute

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## AVOIDING DISPUTES

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provision could be included in the buy-sell agreement(s) whereby the junior partner buys out the senior partner in accordance with the terms of the provision, typically for full value of the senior partner's interest. If, on the other hand, the senior partner is not approaching retirement age, the senior partner may have the ability to buy out the junior partner in accordance with the terms of the buy-sell agreement(s) should the senior partner no longer desire to work with the junior partner.

### MULTIPLE PARTNER PRACTICES

Multiple partner practices should have provisions in place allowing either the partnership to expel a partner for specified reasons, including performance, or for a partner to leave. The purchase price and the payment terms are dependent upon whether the departing partner will practice within the restricted radius under the restrictive covenants for the partnership or outside of the radius.

### FAMILY PRACTICES

For those nonfamily partners in family practices, so long as the nonfamily partner has paid for his or her interest in the practice, that partner should have the ability to leave the practice without the restrictive covenants applying to those patients customarily treated by the nonfamily partner. Such a provision is relatively simple for general dentists, provided that patients are allocated by the treating dentist, but more complex in specialty practices due to referral sources.

### SUMMARY AND THOUGHTS

The senior partner should never give up decision-making control or the tie-breaking vote until he or she is ready to do so. The junior partner should welcome valuable mentorship from the senior partner. So long as the profitability of the practice remains healthy and the junior partner's compensation allocation cannot be changed without a unanimous vote, the junior partner will be OK. All partners should ensure that the partnership agreements contain effective dispute resolution mechanisms where an unhappy senior partner can expel a junior partner or an unhappy junior partner can leave unscathed as a last resort. **DE**

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