



Southern Nevada CCIM Chapter

# Perspective

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## President's Message

Adam Gregory, CCIM

2021 Southern Nevada CCIM Chapter President



The end of the year has arrived, and with that, my time as Chapter President has come to an end. While I have been a board member for the past decade and worked side by side with so many of our amazing Past Presidents, I can definitely state that I have a newfound respect for those that served before me. Our Chapter is the success it is today because of the work done by so many.

We started this year with complete uncertainty regarding what we would accomplish. There was no definitive date on when in-person events would be allowed, how large of an event we could hold, and would our membership even be comfortable in large settings again. I am beyond grateful for the work done by the board this year to meet and overcome so many of these unprecedented challenges. While I was hopeful back in January that we would be able to have a Wine Soiree and Sponsor/Designee Appreciation Event, I did not foresee the tremendous success that would transpire that night in September. In August, we had similar success bringing live CI classes back to Las Vegas. With Education being the foundation of our Chapter and the Institute, it was essential to host a course for the first time in nearly two years. I look forward to several classes returning to our Chapter in 2022.

Our Chapter provided numerous scholarships this year, another accomplishment that was difficult to foresee while restricted to Zoom meetings.

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## Pro Tips

*Always be transparent with your client because in the end they will not only trust your professionalism and advise, but will continue to do business with you.*



Salina Ramirez, CCIM

*I find it really important to get involved in committees in order to work with and get to know other members of CCIM. There are many different committees available to suit your skill set or you can join one that will help you grow that knowledge base.*



Sunshine Bono, CCIM, CPM

## BUSINESS DIVORCE LITIGATION: What To Do Before Bullets Start Flying

Alex Calaway, Esq.

Business divorces can feel like a battlefield. Even a seemingly amicable breakup can escalate to litigation quickly when deadlocks, stalemates, and disagreements between co-owners arise. But, before stepping into the figurative battlefield and letting the “bullets” fly, owners should carefully choose an attorney who has experience with the arsenal of weapons and their varying firepower. For example, the choice of weapon for any particular breakup depends on many factors, including the type and size of the business; the nature of the breakup; whether the business owner is a controlling or non-controlling owner or whether ownership is 50/50; the form of the business entity (LLC, corporation, partnership); the ownership agreements, if any; the character and magnitude of the adverse owner’s complained-of actions and whether the claimed injury is to the owner directly or to the business; the likelihood of reconciling differences; the impact of litigation on the business’ employees and assets; the co-owners’ ability to finance litigation; and an owner’s divorce preference (e.g. selling the business or its assets on the open market, buying out the co-owners, being bought out, or dividing the business assets). While all of these factors should be considered, there are valid reasons to start slow, especially if it’s an ongoing business. As such, an owner may consider these three (3) basic weapons while gearing up for business divorce litigation.

### Books And Records Proceedings

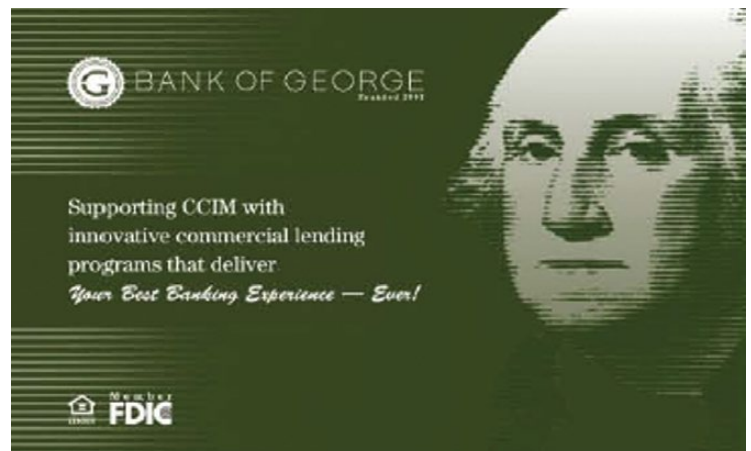
The lowest caliber weapon is a books and records proceeding, wherein a non-controlling owner may compel access to business books and records that the controlling owner refuses to make available. While the application of this weapon depends on the type of business, it is designed to gather information of managerial and financial abuse by the controlling owner that, in a best-case scenario, provides ammunition for a negotiated outcome without necessarily having to air, much less prove in a public forum, specific allegations of malfeasance by the controller. When handled

properly, it can be a simple, expeditious, and cost-effective solution.

### Draft Complaint For Breach Of Fiduciary Duty, Etc.

Taking it up a notch, a Nevada business owner may consider the higher-caliber weapon of drafting a complaint. This can be a powerful weapon in negotiations, even if the complaint is never filed to formally commence a lawsuit. A complaint might include claims for money damages and/or equitable remedies based on

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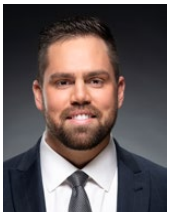


various business torts. While a lawsuit can properly be used and viewed as a tactical mechanism designed to enhance negotiating leverage for a buy-out or other type of settlement agreement allowing the co-owners to part ways, a business owner should also consider the potential cost and toll of litigation on both sides. For example, lawsuits may take years to resolve, involve a flurry of motion practice at the outset of the case for equitable relief, may be followed by a countersuit, protracted litigation, and appeals. Additionally, lawsuits often widen differences between co-owners to the point of being irreconcilable, which can also lead to imminent dissolution of the business.

### JUDICIAL DISSOLUTION

Lastly, there is the “nuclear” option: a proceeding seeking involuntary or judicial dissolution of the company and liquidation under the supervision of a court-appointed receiver. Any member of a Nevada LLC may request a court dissolve the business when it is not “reasonably practicable” to carry on the business under NRS 86.496. While extremely effective, a dissolution triggers a winding-up of the business, which left uncontained, can lead to a disastrous “fall-out” for minority owners and/or mutually assured financial destruction of all owners. For example, the court itself, the company’s operating agreement, or both might turn over complete control to one of the owners, thereby placing the fate of all the assets in an adverse owner’s hands. Alternatively, the court may find it fit to divest all the owners of control by appointing a costly neutral party, such as a receiver, to wind-up the business. Accordingly, like a real nuclear device, this option should be handled with extreme caution to avoid disaster.

In sum, there are pluses and minuses to each of the litigation strategies available when business co-owners have a falling out and cannot resolve their disputes amicably. A business owner should carefully consult with experienced counsel to evaluate not only legal merits, but the practical consequences of business divorce litigation.



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