

Early-stage breakups – a few pointers to keep in mind

Make no mistake – founder breakups hurt. After spending most of your waking hours together, the decision to leave (or being asked to leave!) can cause emotions to run high. Add to that the business aspects: proper founder breakup requires much more than just the words "we're over!"

Here are a few pointers to keep in mind if you have to navigate this situation as an early-stage startup.

Repurchase of unvested shares

If the departing founder has unvested shares, such unvested shares typically will be subject to a re-purchase right by the startup for whatever the founder originally paid for the stock. You will need to confirm these terms by reviewing the founder's stock purchase agreement and right away before it expires. This type of repurchase right is widely considered the market practice.

To leave an indisputable paper trail, document the repurchase of the unvested stock and make sure to deliver the check in the full amount required under the departing founder's stock purchase agreement before expiration.

Buy back vested shares?

In some cases, it may be worth it for a startup to buy back all (or some) vested shares held by the departing founder in order to wipe the cap table clean of the founder's ownership and start fresh. Access to funding often dictates whether this option is on the table.

But why buy back vested shares? First, a startup can use the repurchased equity to attract a replacement for the departing founder. Second, having a scornful ex-founder on your cap table may make for potential disagreements on stockholder decisions moving forward.

Resignation letter

In early-stage startups, co-founders often hold officer and or director positions within the startup. In such case, documenting a resignation letter from a departing founder is best practice. You may collect the resignation letter in the form of an email or written document. Something simple is usually sufficient: "I, John Smith, hereby resign from all positions held by me with Widget, Inc., including my positions as director and Treasurer of the Company."

Intellectual property

Make sure you have an executed copy of the departing founder's confidentiality and intellectual property assignment agreement, and any other agreement related to rights the founder may have assigned or licensed to the company. If you don't have the necessary agreements that document the rights in intellectual property that the company believes it obtained from the founder, it may be prudent to consult your attorney right away. You do not want your departing founder to claim that he or she owns your intellectual property or invented your product, or otherwise has the ability to restrict the company's use of



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its intellectual property. Claims like this are usually made at the most inopportune times, such as the eve of the company's financing or acquisition, which has the potential for creating big problems for the deal.

Founder departures can be emotional and deeply personal situations and nothing that a company wants to endure. However, by paying careful attention to some key matters, the departure can be addressed as painlessly as possible for all involved. Rather than being a drama, it can be a launching pad for the company's future.

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