



Michael Bentz-Senior Partner

Experience on Demand resolves business owner disputes

Are you or someone you know, involved in a business where disputes between owners or stockholders get in the way of operating the business? Where old issues that have equally divided ownership get in the way of addressing current and many times more pressing issues?

Missouri law includes a Provisional Director Statute that provides companies another tool to resolve disputes and get on with making money... and paying taxes.

Most business owners understand mediation and arbitration but without addressing the underlying problem, which could have stemmed from a simple argument, neither method is effective. The Provisional Director can vote as a tie-breaker in board meetings and therefore an action can be taken where no such action was possible before.

Experience on Demand Senior Partner Michael Bentz is leveraging his extensive experience in small to medium businesses when he accepts the Provisional Director role and responsibility. Client companies appreciate his fair and impartial decisions focused on resolving their business issue. Once the deadlock is broken, the company can focus on what is most important- the customer.

Quick example of the point: Mark and Nancy each own 50% of the stock in a Sub-Chapter "S" Corporation. Nancy believes that Mark, who also serves as the CEO, has not taken action to prevent shrinking margins and ineffective at properly marketing the company. Repeated efforts to address the issues have resulted in a complete breakdown in communication. Nancy feels helpless. The two 50% shareholders are deadlocked.

Nancy petitions the St. Louis County Court for a provisional director under Chapter 351 General and Business Corporations statutes, section 351.323. The court appoints a neutral third party, Experience on Demand Senior Partner Michael Bentz as the provisional director.

At the next board meeting, Nancy brings up a new plan for marketing the company. She votes for it which is 50%. Mark votes against it. The provisional director, Michael Bentz votes for the plan and the plan is adopted.

Nancy also suggested some changes in purchasing but the motion failed because Michael did not have enough information to support a vote either way.

The business is now making decisions again and Nancy and Mark regularly speak with Michael to discuss their ideas. Michael facilitates a process whereby the two owners begin to work through business issues themselves.

If you think your company might benefit from a provisional director, you should contact your personal attorney. The company's attorney will not be able to help you in this private matter, as they can only represent the company.

If you are interested in contacting an attorney that specializes in provisional director appointments, you may contact: [Michael Bentz](#) Experience On Demand 314-610-9551.

If you are interest in business counseling, please don't hesitate to contact Experience On Demand-
www.experience-on-demand.com

For additional details about the Missouri Statute, see below:

Missouri Revised Statutes

Chapter 351

General and Business Corporations

Section 351.323

August 28, 2009

Provisional director appointed by court, when--qualifications, compensation, powers, removal.

351.323. 1. If a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired and lost, the circuit court of the county where the principal office of the corporation is located may, notwithstanding any provisions of the articles or bylaws of the corporation and whether or not an action is pending for an involuntary winding up or dissolution of the corporation, appoint a provisional director pursuant to this section. Action for the appointment may be filed by one-half of the directors or by the holders of not less than thirty-three and one-third percent of the outstanding shares.

2. The provisional director shall be an impartial person, who is neither a shareholder nor a creditor of the corporation, nor related by consanguinity or affinity within the third degree to any of the other directors or officers of the corporation, or to any judge of the court by which he is appointed. The provisional director shall have all the rights and powers of a director, and shall be entitled to notice of the meetings of the board of directors and to vote at such meetings, until the deadlock in the board of directors is

broken or until he is removed by order of the court or by vote or written consent of the holders of a majority of the voting shares. He shall be entitled to receive such compensation as may be agreed upon between him and the corporation, and in the absence of such agreement he shall be entitled to such compensation as shall be fixed by the court. The court shall remove such provisional director upon the request of one-half of the other directors or by the holders of not less than thirty-three and one-third percent of the outstanding shares if such provisional director has served for three or more years and the deadlock in the board of directors has not been broken.

3. The shareholders or directors of a corporation, and such corporation, shall be considered to be deadlocked within the meaning of section 351.494 and any and all other provisions of this chapter, notwithstanding the appointment of a provisional director pursuant to this section, if such shareholders, directors or corporation would otherwise be deadlocked but for the appointment of such director.

(L. 1959 H.B. 88, A.L. 1997 S.B. 197, A.L. 1999 S.B. 278)