

# Structuring Joint Ventures

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## OHIO ENTITY SELECTION?

- Sole Proprietorships
- General Partnerships
- Limited Partnerships
- Corporations
- Limited Liability Companies

## **ALTERNATIVE VENTURE FORMS.**

- Teaming Agreements
- Strategic Alliances
- Co-Marketing Agreements
- Joint Research and Development Agreements
- Joint Ventures

## WHAT IS A JOINT VENTURE?

No statutory definition.

Two or more unrelated parties pool, exchange, or integrate some of their resources with a view to mutual gain, while at the same time remaining independent.

## SOURCE OF CONFUSION?

Joint Ventures are not typically separate legal juristic persons but rather a collaboration of independent parties who never yield their separate identities or their legal standing as legal entities.

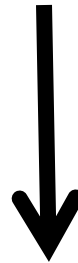
Many joint ventures are corporations, partnerships or limited liability companies and exist as a separate legal entity.

## REALITY CHECK.

### Joint Ventures Are Born to Die

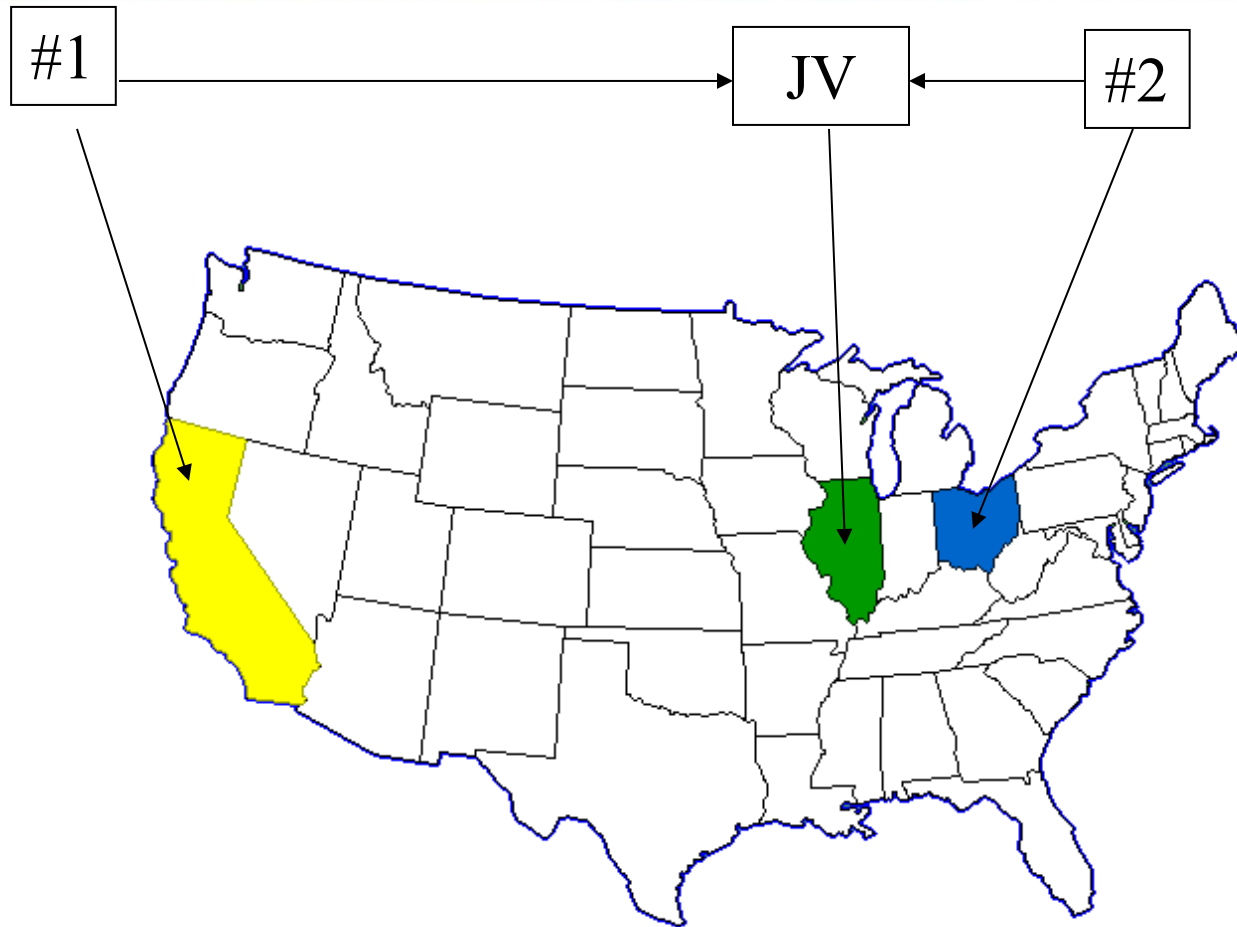
- Most JV die on the vine
- Know where the exit is
- Know how to get to the exit

## TYPICAL JOINT VENTURE



INTEGRATED PRODUCT FOR SALE TO THE RETAIL MARKET



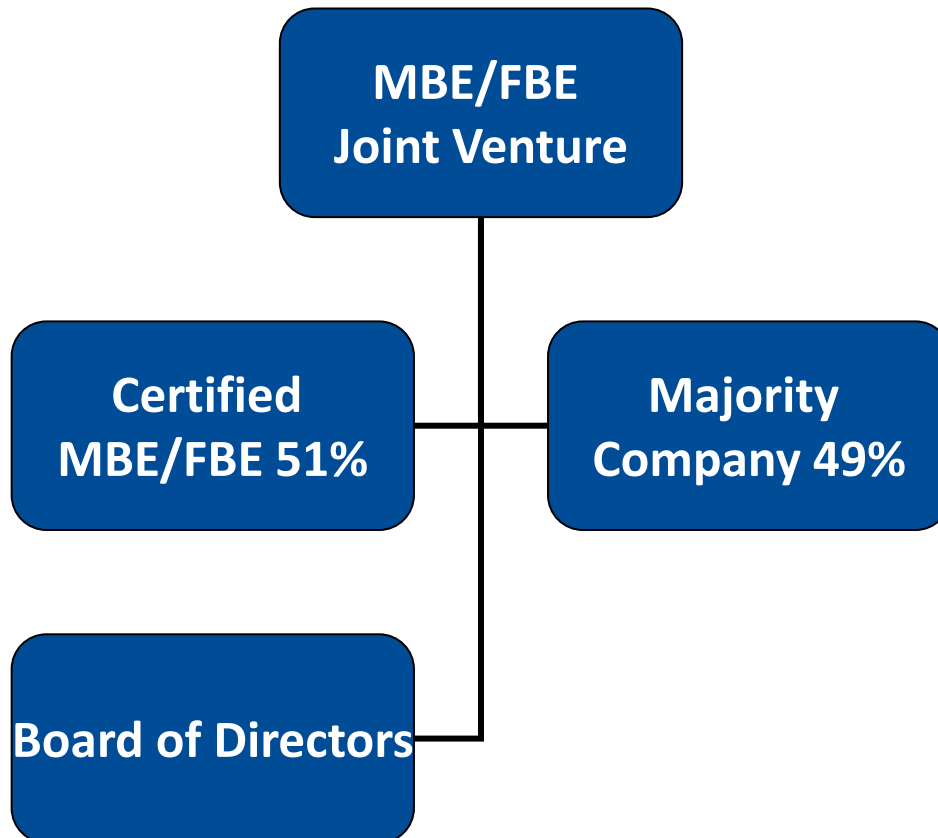


- JV provides a product or service combining expertise or components from each JV partner to sell into a market that neither serves.
- JV ends when opportunity ends.
- JV partners might otherwise be competitors.

## **MBE/ NON MBE JOINT VENTURES.**

- At least one of the parties is a certified MBE or FBE.
- The MBE/FBE controls at least 51% of the JV
- The MBE/FBE controls the JV management and day-to- day operations
- The MBE/FBE interest in capital, profits and losses of the JV is proportionate to its percentage of control
- MBE/FBE workforce actually performs percentage of work consistent with ownership percentage of JV
- JV is located in the contracting market

## MBE/ NON MBE JOINT VENTURES.

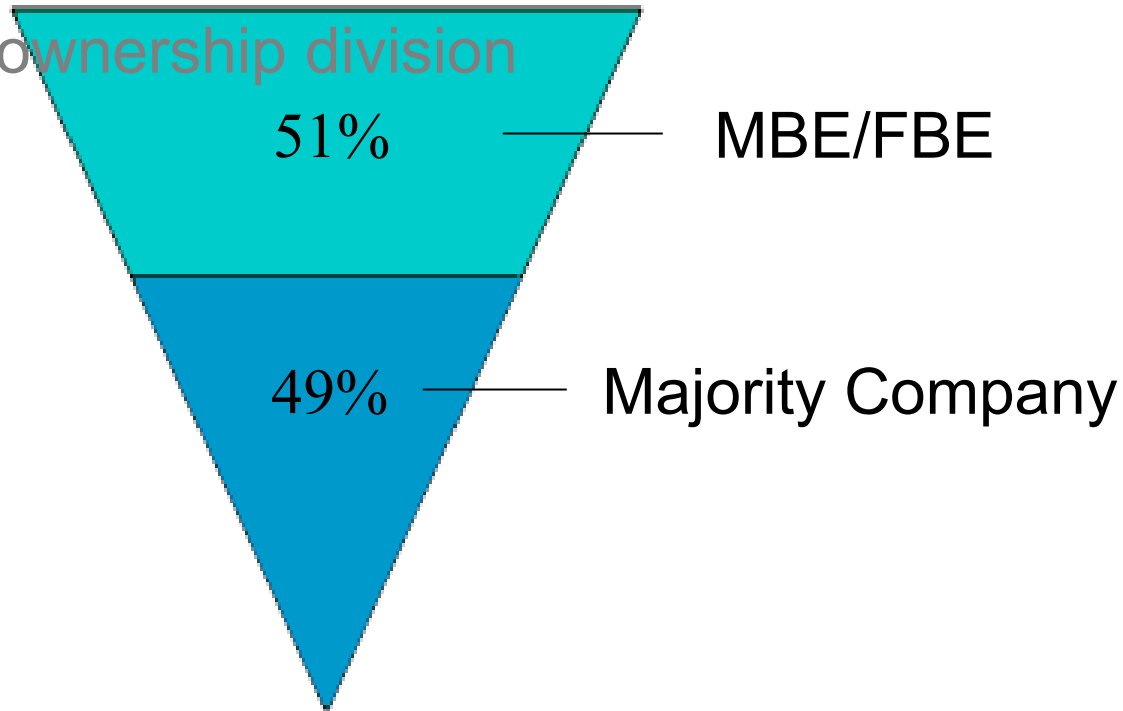


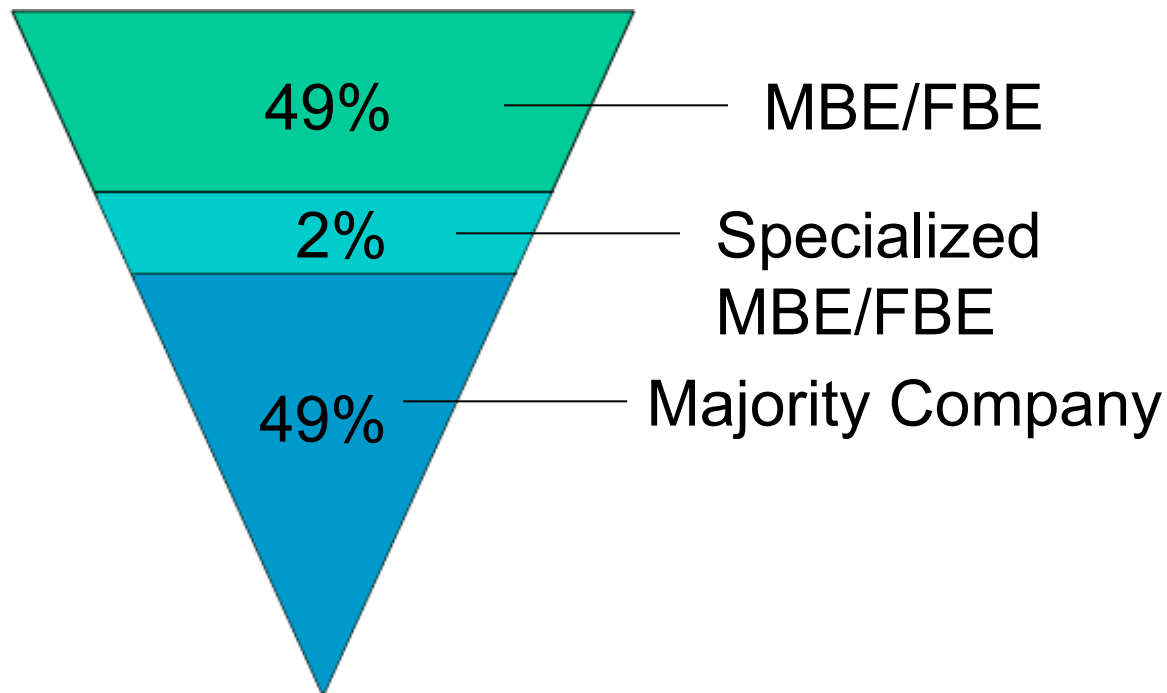
- JV is either a corporation, partnership or LLC
- Control, financial support and distribution of profits and losses are the key issues for JV partners
- Control and legal responsibility are key issues for public entities partners who want credit for MBE/FBE participation

## WHY JOINT VENTURES FAIL?

- Lack of Clearly Defined Goals
- Unrealistic Expectations
- Failure to Budget for Governance
- Financial Constraints of One of the Partners
- Lack of Loyalty to Venture by Partisan Employees
- Parties not committed to professionalism in the management of the Investment

- Typical ownership division





## **KEY JV AGREEMENTS.**

- Confidentiality Agreement
- Letter of Intent (LOI)/Memorandum of Understanding (MOU)
- JV Agreement
- Supply and/or Service Agreement(s)
- Employment Agreement(s)
- Non-Competition Agreement



## 12 STEPS TO JV CREATION.

1. Alignment of Interests of JV Partners
  - Common Strategic Goals and Objectives
2. Recognize JV legal and strategic requirements/limitations
3. Form JV Support Team
4. Agree on initial capitalization requirements
  - Document equity and debt allocations
5. Agree upon additional funding obligations of JV partners
6. Establish basic governance rules and how decisions will be made



## **12 STEPS TO JV CREATION.**

7. Establish rules for JV employees
8. Establish basic rules for asset ownership and use (JV Partners v JV itself)
9. Distribution/dividend rights and timing
10. JV valuation timing and rules
11. Dispute resolution process
12. Business divorce rules

## **ALIGNMENT OF INTERESTS.**

### **Identify Scope of the JV.**

- What will the JV do ?
- What will the JV agree not to do?
- What will JV partners agree not to do ?
- Duration of JV
- Evaluate Need for Collateral Agreements
  - Non-Competition Agreement
  - Licenses
  - Supply Agreements
  - Professional Services Agreements

## JV SUPPORT TEAM.

- Legal
- Tax
- Financial
- Management and Operations
- Entity Valuation Experts

## **DISPUTE RESOLUTION.**

- Legal
- Tax
- Financial
- Management and Operations
- Entity Valuation Experts

## PARTING ADVICE.



## PARTING ADVICE.

Lying to your business partner is **bad**;  
Lying to yourself is **stupid**.

## PARTING ADVICE.

- Be flexible and accommodating but not stupid
- Be prepared to walk away

## **PARTING ADVICE.**

- Evaluate the JV on a regular basis
- Plan on yearly maintenance and adjustment to your JV structure
- Its all about relevance and economic realities, not personality and pride



## QUESTIONS?



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