

## business owners: are you prepared?

Business owners are often so caught up in the day-to-day operations of their businesses that long-range planning inevitably winds up on the back burner. However, long-range planning can quickly become a top priority in the face of a crisis.

For example, what happens if a business owner passes away, becomes disabled, wants to retire and/or sell his interest in a business? These questions are best discussed when they are merely theoretical; the owners will be equally motivated to reach a “fair” solution because no one knows which side of the transaction they will be on.

Business owners need to answer these questions by taking into account the terms of their ownership agreement. They must consider the orderly continuation of the business, and plan to adequately compensate a departing owner for the value of his or her investment and efforts. Often, agreements restrict owners from selling or gifting their interest in the business without first offering that interest to the other current owners. Sometimes transfers are limited to those done for purposes of the owner’s estate plan, for example transfers to a trust or gifts of partial shares to children. Transfers to spouses and children are sometimes permitted—or specifically prohibited. Co-owners may have a great personal and business relationship with each other, but not so great with their respective extended families.

The parties must also agree on a price for the departing owner’s share of the business, or agree on a method to arrive at a price. One way to do this is by periodically setting a price, typically during the business’s annu-

al meeting. The price set is effective until the next meeting, which also encourages parties to schedule annual meetings.

Another method for arriving at a price is for the owners to retain an independent accountant or appraiser to determine the value of the ownership interest. Sometimes the buyer and seller each retain separate appraisers and average the two opinions, or those two appraisers hire a third appraiser. This method may best assure a truly independent valuation without any emotional or personal bias, but may take longer and will increase the cost.

In addition to agreeing on a price, the parties must consider the source of the funds that will be used to pay that price to the departing owner or his or her family. Can the funds be provided out of regular cash flow or savings? Will the price be paid in a single lump sum or in installments over time? Will the funds need

to be borrowed? Will the owners or the business purchase life insurance policies on each owner? In the event of a death, such insurance can be the source of the cash necessary to purchase the interest of the deceased owner.

The parties should also consider how they will re-assign job responsibilities after the departing owner is no longer active in the business. The business will have one less salary to pay, but will also have one less person to do the work and promote the business. Can the business continue to function without the contributions of the departing owner or will a new person need to be added? If the departing owner was an officer and director of the corporation, new titles and positions will need to be filled. Those are often merely a formality. More importantly, and perhaps more difficult, who will fill the shoes of the departing owner in the daily operation of the business? How will it affect the “pecking order” and staff morale? If a new person will need to be brought in, will that person be a salaried employee or will he or she become an equity investor who shares in the profits?

Some disruptions to business during a time of transition are to be expected, but the goal is to minimize them.

Succession planning should be considered carefully before an emergency arises. It is best to be proactive and have a plan in place that provides security for both the departing owner and the continuing owners.

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