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Design a Plan for the Future of Your Business

by Karen Schaefer, Esq.

Business succession planning is a process that should involve a team approach among the business owner and his or her advisors, including business and estate attorneys, financial advisors, accountants, appraisers and business consultants. Why should these experts be consulted?

The answer to this question is that succession planning can affect family dynamics, financial planning for the retirement of the owner of the business and the viability of the business itself. In addition, estate, gift and income tax implications should be considered. Understanding the client and his or her objectives is critical to developing a successful succession plan.

If possible, an owner should identify the successor to his or her business. This allows for the opportunity to train and prepare for succession. To make this selection, certain questions must be asked: Are there family members capable of managing the business, or are there key employees in a managerial position? Does this individual have the temperament and skill to lead a business? If a management team is identified as the successor, does the team work well together and have the capability to continue the business successfully?

Is a buy-sell agreement appropriate for or essential to the succession plan? Before structuring the agreement, the owner should be advised by the team of experts as to the various factors and components of the agreement and how it should fit into the overall succession plan.

The business owner may have particular purposes that mandate the use of a buy-sell agreement, such as where ownership interests are sold or given to successors prior to the ultimate transfer of control. The owner will wish to restrict the transfer of ownership interests to ensure ownership of the business remains within the family or management group. Or the owner may wish to provide a market for his or her business at retirement, death or some other trigger event. The owner may be trying to establish a fair market price or may be trying to avoid a risky 'fire sale' which can occur when there is no plan in place. Another objective may be to provide a source of income for the owner or such owner's spouse or other beneficiaries.

What are the objectives of the successor in accepting the terms of a buy-sell agreement? He or she may want to restrict the transfer of ownership interests by the controlling owner to persons other than the successor. Or the successor may wish



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to establish trigger events for acquisition of the business. And finally, the buy-sell agreement can establish the methodology for determining the purchase price, the terms of payment and financing of the price.

The process of engaging in succession planning can raise numerous issues and potential conflicts. For example, a business owner may have a need for control and may have trouble letting go. Successors may seek control and make decisions benefiting their personal interests rather than those of the company, owner or family. Family conflicts among siblings, spouses and second spouses may also occur. To be successful, a succession plan should address all the issues in an appropriate way and present solutions that in the end will ensure the continued viability of the business.

Equalization problems among family members should be addressed through careful estate planning. Often those family members working in the business seek operational control and com-

penensation commensurate with their efforts. Those outside the business seek gifts or inheritance benefits. Solutions must be developed by the team of experts to address these divergent interests. A successful succession plan for the business should be an integral part of the business owner's overall estate plan.

Retirement planning and an exit strategy must also be planned in advance. It is important to establish a comfortable retirement plan which includes financial security for the owner and spouse. All of this can be addressed with the advice of attorneys who are well-versed in business and estate planning matters.

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