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AVOID BUSINESS OWNERSHIP DISPUTES

By

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If you are one of two or more owners of a business, what happens when one owner:

- dies
- wants to sell to a non-owner
- goes bankrupt
- who is also an employee, quits
- who is also an employee, is fired
- becomes disabled
- wants to buy you out
- wants you to buy him or her out
- gets divorced
- sells to a disqualified owner in a subchapter S corporation
- sells to a non minority in a minority owned business that relies on government minority set asides

The odds of one or more of the foregoing events occurring during the duration of a business are high. The consequences from any one of them can be severe. Among many other possibilities, you may encounter an unwanted business partner, loss of control, litigation, financial strain on the business, loss of subchapter "S" status resulting in double taxation or loss of minority status causing loss of government set aside business. Often times disputes among owners takes a significant emotional toll. They always disrupt the business, are very costly and distract from achieving your business goals. What can you do to prevent this?

All of these risks can be avoided by having a buy-sell agreement. This is a written contract among all owners of a business which provides for the purchase and sale of ownership interests on mutually acceptable terms upon the occurrence of specified events including death, disability, divorce, bankruptcy, desire to sell, and leaving employment with the business.

A buy-sell agreement may provide for the business to have an option or obligation to purchase an interest upon the occurrence of an event. For example, in the event of the death of an owner a buy-sell agreement would typically require the business to buy and the estate of the deceased owner to sell. The buy-sell agreement would also provide an agreed formula to determine the price. To avoid liquidity issues the business would likely purchase life insurance to cover the cost of the purchase.

In the event one owner wanted to sell his or her interest to a non-owner a buy-sell agreement would typically provide that before such a sale the owner desiring to sell would have to offer it first to the business or other owners who would have an option (not obligation) to buy on similar terms. This gives the remaining owners the choice of allowing the sale if they approve of the new buyer or buying it themselves.

Buy-sell agreements can address numerous potential events to provide mutually acceptableterms to all owners in advance of the occurrence of such events. They can also protect important aspects of your business. For example, if you are an owner in a Subchapter "S"

Corporation you would want the buy-sell agreement to prohibit any sale to a nonqualified Subchapter "S" owner. Without this, a disgruntled shareholder could sell his or her interest to an entity as opposed to a person and it would automatically terminate your Subchapter "S" status, resulting in you being double taxed by now having a corporate tax as well as your personal tax on income.

You should never be in business with another owner without a buy-sell agreement. It will prevent costly and unwanted consequences. If you think you don't need one because your other owners are personal friends or family members, think again. Such disputes are generally much worse and far more emotional because one feels betrayed (like a spouse in a divorce) when someone with whom they have a close personal relationship takes action which will harm the other financially.

Sometimes business owners don't want to spend money on what is perceived to be a non essential. Having a buy-sell agreement is analogous to paying for preventive medication. The cost for the prevention is insignificant compared to the cost of treating the disease.

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