BUSINESS

BUSINESS CONTINUATION CONCEPTS

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A Dilemma

When a business owner dies, a myriad of potential problems can occur. Surviving owners need to:

- Retain control of the business without interference from the deceased owner's heirs
- Enact a prompt transfer of the deceased owner's interest at a fair price
- Preserve the loyalty and support of employees, customers and creditors during and after the transition in ownership

The deceased owner's heirs want:

- Ongoing financial security after the loss of the deceased owner's salary and benefits
- Retention of the business interest or a timely sale at an attractive price
- Prompt settlement of the deceased's estate (including proper valuation of the business interest in cases where they plan to sell)

The Reality

- Conflicts leading to litigation can arise between the deceased owner's heirs and the surviving owners.
- Delays in the transition to new ownership and delays in settling the deceased owner's estate may be inevitable.
- Loss of customers, employees or creditor confidence can damage the business—and possibly even force liquidation.

The Solution

A formal, written buy-sell agreement between the business owners funded with life insurance is the first step in ensuring an orderly and successful transition in ownership following an owner's death. The buy-sell agreement:

- Establishes a fair price for the business interest and terms of sale that are acceptable to all parties.
- Establishes a value for estate tax purposes, which helps avoid estate settlement delays and IRS challenges.

- Establishes the basis for determining the amount and funding of life insurance needed to fund the purchase of the business by heirs or others.
- Encourages confidence in the ongoing vitality of the business in the eyes of customers, creditors and employees.

The Bottom Line

A properly designed buy-sell agreement satisfies the concerns of all parties involved by ensuring business continuation that benefits everyone—heirs, new owners, employees, customers and suppliers. Fully funding the agreement with life insurance is an effective way to ensure the viability of the sale when the time comes.

NOTE: The Supreme Court ruling in *Connelly v. United States* means that life insurance proceeds paid to a corporation under a buy-sell agreement in which the company owns the life insurance policies will affect the value of the company and have tax implications for the deceased owner's estate. It is critical for business owners to work with a tax and/or legal professional to carefully evaluate any new or existing buy-sell agreement.

SUMMARY

When a business owner dies, the financial consequences depend on how well the business has prepared for a transition of ownership.

What the Surviving Owners Want

Surviving owners typically look to retain total control of the business without interference from the deceased owner's heirs. They may also expect that the heirs will sell them the deceased owner's interest promptly and at a fair price. Most importantly, they want to retain the loyalty and support of employees, customers and creditors during and after the change in ownership.

What the Heirs Want

The deceased owner's heirs want ongoing financial security, especially after the loss of the owner's salary and benefits. Heirs typically expect prompt settlement of the deceased owner's estate, including a valuation of the business interest if they plan to sell it. The family may want to retain the business interest or sell it promptly at an attractive price.

Without Preparation

When there is no formal buy-sell agreement addressing what will happen when an owner dies, unhappy consequences can result. Litigation between the deceased owner's heirs and surviving owners is not uncommon. Delays in settling the deceased owner's estate and conflicts with surviving owners can result in loss of customers, employees and creditor confidence, and these outcomes can damage the business—and possibly even force liquidation, the worst possible result.

The Place for a Buy-Sell Agreement

A buy-sell agreement is the first step in ensuring an orderly and successful transition in business ownership following an owner's death. The agreement can establish a fair price for the business interest and sale terms that are reasonable and agreeable to all parties. The agreed-upon value for the business interest is typically accepted by the Internal Revenue Service for estate tax purposes, which reduces estate settlement delays. Of course, a professional appraisal of the business should be performed. Seek legal counsel for advice on this subject.

The Result

A buy-sell agreement represents a clear solution to a series of difficult problems. Properly designed, a buy-sell agreement can benefit all parties—heirs, owners, employees, customers and suppliers. Fully funding the agreement with life insurance is an effective way to ensure the viability of the sale when the time comes. Work with tax and/or legal professionals to ensure the agreement is properly structured, minimizes any potential tax impact, and avoids unintended tax consequences.

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