Cipparone & Zaccaro, PC

Business Succession Checklist

What events will trigger a sale of an owner’s shares?

* Death
* Termination of employment
* Disability
* Bankruptcy
* Divorce
* Normal Retirement

What will be the Purchase Price for each share and how will it be determined?

* Appraisal (can be expensive; can accountant create a formula that would fairly state the value?)
* Frequency of valuation
* How many appraisers
* Formula determined by appraisal now?
* Should there be discounts for minority interest and lack of marketability?

How will the remaining owners pay for the selling owners shares?

* Installment purchase allowed? If so, over how many years and at what interest rate? Rate based on WSJ Prime Rate at time of purchase?
* Pledge stock as collateral for installment sale
* Interest rate (how determined?)
* Deposit (how much?)
* Promissory Note to evidence installment payment obligation
* Use life insurance?
* Redemption and payment must be permitted by state law (only if Company is solvent can it make payment to shareholder)

Should the remaining shareholders have a right of first refusal if an owner wants to sell to an outside party?

* Assures that remaining shareholders retain ownership
* Decreases value of company to exiting shareholder

What restrictions should be placed on an owner’s shares?

* Can only sell to Company or shareholders
* Gifts to family members allowed as long as duty to sell when shareholder is required to do so?

Will life insurance be used to fund the purchase on the death of an owner?

* Payment of premiums (company)
* Purchase price at least as high as insurance proceeds
* Transfer of life insurance policy after sale

Should we have the life insurance payable to an independent party like our law firm and the remaining owners pledge their stock as collateral for the amount owed above the life insurance proceeds?

* Assures that agreement followed
* Adds cost and complexity

Should all parties have a right to specific performance of the sale?

* Right to sue to complete deal as signed
* Would money damages suffice?

In what circumstances should this business succession plan terminate?

* Bankruptcy
* Agreement of all parties
* Sale of the Company by all owners

Should the business succession plan include a Non-Competition Agreement?

* Nonsolicitation of employees
* Confidentiality
* Equitable Relief for violation of the Agreement

If a dispute arises over the business succession plan, how should the dispute be resolved?

* Mediation
* Arbitration
* Court action
* Who pays attorneys fees. Prevailing party?

Will the remaining owners have a Business Consulting Agreement with the selling owner?

* Eases transition
* What rate of pay
* What benefits
* Grounds for terminating the Agreement