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A Vital Business Document: the Buy/Sell Agreement

Every business should give serious consideration to how the company would deal with the death, disability, or departure of one of the owners.

Like a will, a buy/sell agreement (also known as a business continuity contract) spells out how assets and other business interests will be distributed should an owner quit, become disabled, or die.

Without such an agreement, complications arising from ownership succession may capsize an otherwise thriving company. The remaining owners might be forced to share management and profits with unskilled or contentious outsiders. They may be embroiled in legal disputes over business assets and liabilities. A firm's internal squabbles may spill over to customer service, resulting in lost sales. If the firm's ownership seems doubtful or its future uncertain, creditors might accelerate collection efforts, bringing unwanted pressure on company resources.

The possible death of an owner isn't the only reason to prepare a buy/sell agreement. Sometimes an owner voluntarily decides to leave a company. He or she may want to pursue another business opportunity, a change of climate, a different professional relationship, or a well-earned retirement. By providing a mechanism for assessing a firm's value and ensuring that all parties are treated equitably, a carefully crafted buy/sell agreement will facilitate that kind of transition as well.

At a minimum, a buy/sell agreement should cover the following:

* Triggering events. What happens if an owner dies, becomes disabled, or leaves the company? What happens if he or she files for divorce or is caught skimming profits? The buy/sell agreement should spell out the company's response to such events, including how assets will be transferred, stock ownership controlled, and voting rights secured by the remaining owners.
* Valuation. The agreement should lay out how the business will be valued should a triggering event occur. For example, it might include a specific price for an owner's interest or specify a formula for determining the company's value. It might even name a specific firm to conduct the valuation. If the triggering event is the death of an owner, the buy/sell agreement might also guarantee a specific lump sum to be paid to the deceased owner's estate.
* Buyout method. If one owner leaves the firm, becomes disabled, or dies, the buy/sell agreement should contain provisions specifying how remaining owners will buy out the interest of that partner. (In many cases, owners use life or disability insurance proceeds to fund a buyout.)

To ensure that the buy/sell agreement remains relevant and up to date, owners should review it periodically and revise it as needed. Having an experienced CPA look at the business financial considerations is critical. We have the expertise to assist you and have qualified valuation experts with the specialization credentials in the event that a valuation is required. As necessary, we provide a teamwork approach with your attorney or we can recommend a specialized attorney we know and trust. If you want to consider our helping you prepare or review a buy / sell agreement, please contact us. inquiries@mangoldcpa.com or 512-327-0909, ext. 212