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# **Exit Planning for Business Owners**

## **The Ten Deadly Mistakes**

### **Part Three: Partners Without a Comprehensive Buy-Sell Agreement.**

When we started this series part one dealt with **The Sole Owner Dying or Becoming Permanently Disabled Without a Plan**. Next on the list was **The Business Experiences a Sudden, Catastrophic Loss and all of the in Owner's Financial Eggs are in the Business**. Now we will address the third issue, which is:

### **There is no Comprehensive Buy/Sell Agreement Between the Partners and One Dies, or the Partners Have an Irreconcilable Falling Out: Both of These Situations Commonly Result in Litigation.**

The subject of buy/sell agreements is the most extensive of the 10 problem areas because it is here where the most problems can occur. This is also the area that gets the least amount of attention. When friends and family members decide to go into business together it's like a couple planning marriage: all is wonderful, nothing can go wrong and they will live happily ever after. Unfortunately the honeymoon ends, things start to go wrong, and the partners find that their partnership agreement does not cover many of their problems.

Because there are too many issues that can arise in multiple owner businesses to cover in one newsletter, we will only address key items in this issue. The first item is what happens when one working **partner becomes permanently disabled** and can no longer carry his/her load. The Buy/Sell

or Partnership Agreement needs to speak to this issue and clearly define how this matter will be addressed. If the partner is to continue to receive a normal salary, there should be disability insurance in place covering all partners to protect the business against this expense. The same is true if **one partner dies**. Key man insurance should be in place to provide the funds needed to buy that partner's shares in the company, which raises another issue:

**Mandatory versus optional buyouts:** What to do when one partner wants to retire and the other wants to stay on running the company or, what happens when a minority owner, a key employee who earned equity through stock bonuses, quits or is terminated. Partnership agreements need to address the following questions:

1. Does the departing shareholder have a right or obligation to sell?
2. Does the remaining shareholder have a right or obligation to purchase?
3. How will the shares be valued?
4. What will be the terms and conditions of the sale?

The absence of a trigger in the partnership agreement that prescribes **how the value of the partners' shares is to be determined** can and does lead to litigation. Rules governing ESOPs (Employee Stock Ownership Plans) require the company to be appraised by a competent business appraiser once each year. This practice makes good housekeeping sense for every business and can be incorporated into the partnership agreement to prevent disputes between the remaining partners and the departed partner's heirs. Regular business appraisals will also help the owners in business planning, exit planning, making sure there is sufficient life and disability insurance, and a host of other matters that should be attended to annually but are usually overlooked.

You and your partners may feel confident that your partnership can withstand any adversity. Keep in mind that any partnership, no matter how productive, can go sour. Former U.S. Senator Abraham Ribicoff was recently quoted in the Washington Post as advising two business partners to "Plan your divorce while planning your marriage". Very sound advice.

Call Lou Kastelic at Jordan-Crandus, P.A. for a free initial consultation on business exit planning.

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