



Estate Plan Checkup

How to avoid disputes in a closely held business

So, your will or living trust is completely signed (finally!) and you have your durable power of attorney and your health care directive taken care of. Are you finished with your estate planning? Maybe not ...

If part of your estate is an interest in a closely held business, make sure that the internal affairs of the business and the agreements with your business partners are taken care of so that transition of your ownership and/or management of the business will be as smooth as possible. Here are some items you may want to verify as part of an “estate plan wellness checkup” for your closely held business:

Careful planning on your part can help avoid a family feud, keep disagreements out of court, and keep the closely held business still in business.

- Do you and your business partners have a buy-sell agreement, either as a stand-alone or as part of a shareholders’ agreement, which can provide effective guidance on who may (or must) buy your interest in the business?
- Do you have a management succession plan that identifies who will be the next generation of business leaders?
- Does your buy-sell agreement have an agreed upon valuation formula or process for valuing your interest in the business?
- Is the valuation formula clear about what method must be used to establish value (e.g., book value or otherwise, with or without certain discounts)?
- Is the payment plan workable for both your estate and your surviving partners? Does it provide adequate security to ensure payment in full?
- Are all terms of art and all provisions of the buy-sell agreement that are unique to your industry or your business clearly defined so that any third party who is involved in valuation knows what you and your partners meant by the words you used?
- Have you carefully identified the required credentials for any valuation “expert” that your estate or surviving partners retain to do the valuation (e.g., ASA, CBA or CCIM)? Must they be “experienced in valuing businesses of this type”?

- Do you and your partners actually conduct the periodic valuations of your business on the schedule called for by your buy-sell agreement so that there will always be a currently agreed upon valuation at any time that one is needed by your executor or successor trustee?
- Does the buy-sell agreement expressly provide your executor or successor trustee with a right to access company records in order to value your interest, both for purposes of estate tax return and for purposes of valuing the interest for sale? (For closely held businesses, the IRS regulations call for “complete financial and other data used to determine value” for the five years before the valuation date.)
- Do you have an effective dispute resolution process that provides detailed instruction on how to resolve disputes regarding value in the event that there is a disagreement between your estate and the person or entity purchasing your interest?
- Does your executor or successor trustee have the right to continue participating in decision making for the business during the period of estate administration or until your interest has been fully paid for?

No one wants to leave his or her family saddled with a dispute between the estate/trust and the deceased person’s surviving business partners. Taking the time now to review your buy-sell agreement and ensuring that you have minimized opportunities for dispute is often the final step in a complete and well-thought-out estate plan. Careful planning on your part can help avoid a family feud, keep disagreements out of court, keep the closely held business still in business, keep more assets in your estate and, ultimately, leave your beneficiaries with the legacy you intended.

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