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Buy-Sell Agreement: What it Means for Your Business

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Not many business owners have taken the time to consider the effect on their business should one of their partners become disabled, divorced or unexpectedly die.

Not surprisingly, because most business owners are too focused on the day-to-day operations and financial stability of the company to consider such possible future events. Some are not aware that they could be forced to continue running the business with a disabled partner or with thier partner's ex-spouse. Very few owners understand the catastrophic consequences such a personal event could have on a business and how it could dictate the company's success or failure. That is, unless the business owners have put in place the proper exit strategies typically found in a buy-sell agreement.

Any time I sit down with a new client — whether it be a first time entrepreneur or an established business owner — one of the very first things I'll determine is whether they have a buy-sell agreement in place. This agreement provides the owner with an exit strategy from the business should certain unexpected issues arise. In a public company, an owner looking to exit an organization may simply sell his or her interest on the open market. In a closely held entity, however, it is a bit more complicated.Therefore, owners of privately held businesses must establish buy-sell agreements as a mechanism to ensure the continuity of control and ownership, and provide for succession planning.

Depending on the complexities of the ownership structure within an organization, buy-sell agreements may be extremely complex. However,

continued on page 2

continued from page 1

at a minimum, all such agreements should address the following:

- Restrictions on the transfer of ownership interests;
- Triggering events such as death, disability or divorce which may result in the sale of the affected ownership interest;
- The method by which the ownership interests are to be valued particularly in the context of a triggering event; and
- The procedure by which an ownership interest is to be purchased and the purchase price paid.

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Further, it may also be beneficial to address such issues as tax consequences to the owners, life insurance, and entity control. Each of these functions, when carefully considered and implemented, will provide business owners with security that should an unexpected event occur, the business will remain in the best position to continue its operations.

Preparing a buy-sell agreement will take time, patience and proper guidance and it will also force business owners to consider such unpleasant events such as their own mortality or disability. However, preparation of a buy-sell agreement at an early stage of the business will provide the owners with a proper framework to address these issues as they arise and ensure organizational stability. And even if you already have a buy-sell agreement in place, there is no better time than now to bring it out and make sure it remains accurate and up to date. As businesses evolve, it is important to ensure that your buy-sell agreement continues to align with where your business is and where you anticipate it going.

James Waggoner is an associate in the Business Practice Group of Clark Hill's Detroit office and concentrates his practice in corporate law. James earned his J.D., *cum laude,* from Michigan State University College of Law, where he received numerous awards for academic merit, including the Jurisprudence Achievement Award for Contracts II. **Contact him at jwaggoner@clarkhill.com or 248-988-5873.**