

Continuity Planning for an Unexpected Death or Disability

Our area of expertise is about planning for bad health scenarios. The thorough Continuity Planner will have solid answers (and good, tight documentation) for the questions listed below.

In the event of disability of a shareholder:

- For how long does the disabled shareholder receive salary?
- What is the corporate philosophy for paying dividends if one shareholder is disabled?
- At what point (and at what price) does the disabled shareholder sell to the working shareholder?
- In order to determine if a transfer of shares should occur, who defines “disability”?
- How do you determine disability involving “mental capacity”?
- Is there a replacement to do the job of a disabled shareholder, in order to protect the value of the company?

In the event of the death of a shareholder:

- Who replaces the job and talent of the deceased shareholder?
- Will lenders ask for loan repayment?
- Will customers and key business contacts disappear?
- Does the family of the deceased continue to own shares and share in profit?
- Does the family of the deceased sell to the surviving shareholder(s)?
- How is the value set?
 - ◆ Specific formula related to earnings/assets?
 - ◆ Periodically-reviewed price?
 - ◆ Business valuator appointed by seller and another by buyer?
 - ◆ Set by firm accountant? (potential conflict of interest as accountant will continue to work for survivor)

If life insurance is to be used to fund the purchase of shares at death:

- Can all shareholders pass an insurance medical?
- Who owns and is the beneficiary of the insurance?
- Can the life insurance be assigned as collateral? Or borrowed against?
- Have the tax benefits to seller and buyer been analyzed and explained?
- How do you handle an excess or deficiency of life insurance?
- Does the shareholder agreement state that the capital dividend account must be used?
- Does the shareholder agreement or bank loan agreement authorize the paying of a capital dividend, or any dividend?
- What happens to life insurance policies if no longer needed for the original purpose?

- If ownership of life insurance is transferred, at what price?
- Does the shareholder agreement refer to the life insurance setup correctly?
- What happens if the life insurance does not pay?
- The life insurance and shareholder agreement could be set up in different ways. Have all the following options been evaluated?
 - ◆ Cross Purchase Method
 - ◆ Share Redemption Pre Stop-Loss Rules
 - ◆ Roll and Redeem Method
 - ◆ 50% Solution
 - ◆ 100% Solution
 - ◆ Hybrid Method